Supreme Court of the United States

OCTOBER TERM, 1965

No. 291

UNITED STATES, APPELLANT

vs.

STANDARD OIL COMPANY

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF FLORIDA

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Record from the United States District Court for the Middle District of Florida, Jacksonville Division		
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[fol. A]

IN THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF FLORIDA, JACKSONVILLE DIVISION

No. 64-298-Cr-J.

THE UNITED STATES

vs.

STANDARD OIL COMPANY

For U. S.:

Wm. J. Hamilton, Jr.

For Defendant:

Richard H. Miller of Mahoney, Hadlow, Chambers & Adams.

Statistical Record

J.S. 2 mailed 10-26-64	Clerk
J.S. 3 mailed 3-26-65	Marshal
Violation Discharge gas into St. Johns River-Navigable waters	Docket fee
Title 33	
Sec. 407	

DOCKET ENTRIES

Date	
1964	
Oct. 26	Information Filed.
Nov. 25	Notice of Arraignment on Dec. 4, 1964 at 9:30 A. M.
Dec. 3	Motion to Dismiss Information by Deft.

Date		
1964		
Dec. 4	Arraigned and Plead Not Guilty	
Dec. 4	Continued to be set for Trial at a later date	WAM R-31
1965		
Feb. 11	Notice of Hearing on Pending Motions on Feb. 16, 1965 at 10:20 A. M.	
Feb. 15	Notice of Trial on Mar. 8, 1965 at 9:30 A. M.	
Feb. 16	Hearing on Defendant's Motion to Dismiss	BS
Mar. 8	Continued for Term in open court	BS
Mar. 24	Stipulation between Parties.	
Mar. 26	Order Granting Motion to Dismiss and Dismissing Information.	R-32 BS
Apr. 26	Notice of Appeal to the Supreme Court of the United States filed by United States	

[fol. B]

[Clerk's Certificate to foregoing paper omitted in printing]

[fol. 1]

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

No. 64-298-Cr-J
(33 USC 407)

[File Endorsement Omitted]

[Title Omitted]

INFORMATION—Filed October 26, 1964

The United States Attorney charges:

COUNT ONE

That on or about November 21, 1963, at Jacksonville, in the Middle District of Florida, Standard Oil Company did discharge and deposit and did cause, suffer and procure to be discharged and deposited from and out of its oil discharge terminal at the Standard Oil docks, 3117 Talleyrand Avenue, refuse matter, that is, 100 octane aviation gasoline, into the St. Johns River, navigable waters of the United States; in violation of Title 33, United States Code, Section 407.

EDWARD F. BOARDMAN
United States Attorney

By /s/ William J. Hamilton, Jr.
Assistant United States Attorney

[fol. 2]

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

No. 64-298-Cr-J
(33 USC 407)

[File Endorsement Omitted]

[Title Omitted]

MOTION TO DISMISS INFORMATION—filed December 3, 1964

The Defendant, STANDARD OIL COMPANY (INCORPORATED IN KENTUCKY), moves that the information be dismissed on the ground that it does not state facts sufficient to constitute an offense against the United States of America.

MAHONEY, HADLOW, CHAMBERS & ADAMS

By /s/ Earl B. Hadlow
Attorneys for Defendant
Post Office Box 4099
Jacksonville, Florida

[Certificate of service (omitted in printing)]

[fol. 3]

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

No. 64-298-Cr-J

[File Endorsement Omitted]

[Title Omitted]

STIPULATION—filed March 24, 1965

The United States of America and Standard Oil Company, the defendant in the above-styled case, acting by and through their respective undersigned attorneys, do hereby stipulate and agree to the following facts, for the purposes and subject to the limitations hereinafter set forth:

1. On or about November 21, 1963, at Jacksonville, Florida, certain employees of Standard Oil Company did repair and clean a main, 8-inch line connecting one of its bulk storage tanks at its Tallyrand plant with dock facilities.

2. At the completion of the repairing, cleaning and airing-out of the line, employees of Standard Oil did refill the line with 100-octane aviation gasoline which was then stored in the bulk storage tank, and, because the main shut-off valve at the dockside end of the line had been accidentally left open, approximately 300 gallons of the described gasoline spilled out of the open valve, onto the dock, and thus into the St. Johns River, which constitutes navigable waters of the United States. The shut-off valve was closed immediately and the amount of the spill was not such to impede navigation, to damage property or to cause any fire or explosion.

[fol. 4] 3. Standard Oil immediately reported the matter to the City of Jacksonville Fire Department and to the United States Coast Guard. Thereafter Standard Oil Company was charged, by information, with a violation of

Title 33, United States Code, § 407, which states in part that:

> "It shall not be lawful to throw, discharge, or deposit, or cause, suffer or procure to be thrown, discharged or deposited . . . any refuse matter of any kind or description whatever . . . into any navigable water of the United States."

4. The 100-octane aviation gasoline which was accidentally discharged into the St. Johns River was undiluted, unspoiled and unadulterated, and spilled directly from Standard Oil Company's main storage tank and main delivery line running therefrom onto the docks and into the river. Such fuel was sound, valuable and usable material, in no way damaged or impaired in value prior to the unintentional spillage thereof from the open valve and into the navigable water.

5. The spilled gasoline was not salvaged by Standard Oil Company and was dissipated into the river by the current, and by fire hoses and boat wakes of the Jacksonville Fire Department and the United States Coast Guard.

6. It is agreed by and between the parties that this factual stipulation is submitted in this form for the sole and single purpose of assisting the Court in making a proper ruling in respect to and in disposition of the defendant's Motion to Dismiss Information heretofore filed in this cause. Both parties reserve the right to file another or supplemental stipulation of facts and to produce live testimony and exhibits in the event this cause proceeds to trial.

[fol.5] ISSUE

The issue before the Court, accordingly, is whether or not the United States of America has stated in its Information facts sufficient to constitute an offense against said United States of America, by alleging, in this regard, that Standard Oil Company did discharge "refuse matter" into navigable waters of the United States, which refuse matter consisted of "100-octane aviation gasoline."

Respectfully submitted by and on behalf of the parties hereto, at Jacksonville, Florida, this 23rd day of March, 1965.

EDWARD F. BOARDMAN
United States Attorney

/s/ William J. Hamilton, Jr.
Assistant United States Attorney
Attorney for the United States of America
407 Post Office Building
Jacksonville, Florida

MAHONEY, HADLOW, CHAMBERS & ADAMS

/s/ Earl B. Hadlow
Attorney for Defendant, Standard Oil Company
P. O. Box 4099
Jacksonville, Florida

[fol. 6]

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

No. 64-298-Cr-J

[File Endorsement Omitted]

UNITED STATES OF AMERICA

vs.

STANDARD OIL COMPANY

ORDER GRANTING MOTION TO DISMISS AND DISMISSING INFORMATION—March 26, 1965

On a prior date the Defendant's Motion to Dismiss (filed December 3, 1964) was argued and submitted by counsel for the respective parties. Both government and defense counsel were agreeable to the Court's considering admitted facts in the disposition of the Motion to Dismiss. At the Court's suggestion, counsel agreed to submit a written stipulation of facts to be considered by the Court solely in connection with the Motion to Dismiss. The case was taken off the trial calendar for March 8 to permit this to be accomplished.

Formal Stipulation, dated March 23, 1965, was filed by counsel for the parties March 25, 1965, and is considered by the Court in disposing of the Motion to Dismiss. The crucial facts now made to appear, in addition to those alleged in the information, are these: By the accidental failure to close a shut-off valve controlling a line connecting the Defendant's bulk storage facilities at its Talleyrand plant, Jacksonville, with its dock facilities, about 300 gallons of 100-octane aviation gasoline was permitted to spill out of the open valve onto the Defend-
[fol. 7] ant's dock and from thence into the St. Johns River, which constitutes navigable waters of the United States. The shut-off valve was closed and the amount of spill was not such as to impede navigation, to damage

property, or to cause any fire or explosion. The gasoline so accidentally discharged into the river was undiluted, unspoiled and unadulterated. It was sound, valuable and usable material, in no way damaged or impaired in value prior to the unintentional spillage from the open valve and into the navigable waters. The gasoline was not salvaged and was dissipated into the river by the current thereof and by fire hoses and boat wakes of the Jacksonville Fire Department and the United States Coast Guard.

The Information here is brought under Title 33, U.S.C., Section 407, which states in part:

> "It shall not be lawful to throw, discharge, or deposit, or cause, suffer or procure to be thrown, discharged or deposited . . . . any refuse matter of any kind or description whatever . . . into any navigable water of the United States."

The information charges the offense in the statutory language, referring to the substance discharged into the river as "refuse matter". The critical question is whether or not this valuable and entirely usable material may be construed to fall into the description of "refuse matter". This is so since the admitted facts at the least show that the matter was "suffered" to be discharged.

The answer to this question seems to me to be found [fol. 8] in *U. S.* v. *The Delvalle*, 45 F.Supp. 746, decided by District (later Circuit) Judge Wayne Borah in the Eastern District of Louisiana of this Circuit June 24, 1942. There, as here, valuable and usable matter (fuel oil in The Delvalle) was accidentally discharged into navigable waters through the failure of a member of the ship's crew to completely close the shut-off valve.

Judge Borah's Conclusions of Law were short and are quoted herewith:

> "Conclusions of Law.
>
> "1. The statute in suit is a penal statute and must be strictly construed.
>
> 2. The word 'refuse' is used in the statute in its adjective sense. Webster's New International Dictionary, 2nd Edition, Unabridged, defines the ad-

jective, 'refuse', as follows: 'Refused; rejected; thrown aside or left as worthless or of no value; worthless; useless.'

3. The oil involved in this proceeding was not refused, rejected, or thrown aside or left as worthless or of no value. It was not worthless nor unless. The accidental discharge of valuable, usable oil, under the circumstances set forth, does not constitute a throwing, discharging, or depositing of refuse matter, and is not a violation of the statute. 33 U.S.C.A. §§ 407, 411 and 412.

4. The libel should be dismissed.

Let a decree be entered accordingly."

Other cases are cited, Second Circuit, which might require a different conclusion. They are: *The Colombo*, 42 F.2d 211, and *U. S.* v. *Ballard Oil Co. of Hartford, Inc.*, 195 F.2d 369. The Second Circuit said in the latter case:

"The spilled oil was certainly 'refuse matter'; it had escaped from the tank whither it could not be [fol. 9] reclaimed; and for all useful industrial purposes it had ceased to exist. The word, 'refuse', does not demand that the material must have been deliberately thrown away; it is satisfied by anything which has become waste, however useful it may earlier have been."

Since the question is open in this Circuit, I am constrained to follow Judge Borah's decision which to me seems sound and well reasoned, based as it is upon the dictionary definition of the term "refuse" not otherwise defined in the statute. This is especially so since we deal here with a penal statute which should be narrowly and strictly construed.

In consideration of the foregoing, it is

ORDERED that the Motion to Dismiss of the Defendant Standard Oil Company is granted and the Information is dismissed.

DONE AND ORDERED in Chambers at Jacksonville, Florida, this 26th day of March, 1965.

/s/ Bryan Simpson
Chief Judge, U. S. District Court

Copies mailed to:

EARL B. HADLOW, ESQ., P. O. Box 4099, Jacksonville, Florida, 32201, Attorney for Defendant.

UNITED STATES ATTORNEY, (AUSA Hamilton), 407 Post Office Building, Jacksonville, Florida.

[fol. 10]

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

No 64-298-Cr-J

[File Endorsement Omitted]

UNITED STATES OF AMERICA, PLAINTIFF

v.

STANDARD OIL COMPANY, DEFENDANT

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES—filed April 26, 1965

I. Notice is hereby given that the United States appeals to the Supreme Court of the United States from the order and judgment of March 26, 1965, dismissing the information which charged the defendant, Standard Oil Company, with a violation of 33 U.S.C. 407.

This appeal is taken pursuant to 18 U.S.C. 3731.

II. The Clerk will please prepare a transcript of the record in this case for transmission to the Clerk of the Supreme Court of the United States, and include therein the following:

1. Transcript of docket entries
2. Information
3. Motion to dismiss the information
4. Stipulation of facts to be considered by the Court in connection with the motion to dismiss
5. Order granting the motion to dismiss and dismissing the information
6. This notice of appeal

III. The following question is presented by this appeal:

Whether gasoline which was permitted to spill out into navigable waters of the United States constituted "refuse [fol. 11] matter" within the purview of 33 U.S.C. 407 prohibiting the discharge of any refuse matter of any kind or description into the navigable waters of the United States.

EDWARD F. BOARDMAN
United States Attorney

/s/ William J. Hamilton, Jr.
Assistant United States Attorney

Dated this 26th day of April 1965.

[Clerk's Certificates to foregoing paper and transcript omitted in printing.]

[fol. 12] • • •

[fol. 13]

SUPREME COURT OF THE UNITED STATES

No. 291, October Term, 1965

UNITED STATES, APPELLANT

v.

STANDARD OIL COMPANY

APPEAL from the United States District Court for the Middle District of Florida.

ORDER NOTING PROBABLE JURISDICTION—October 11, 1965

The statement of jurisdiction in this case having been submitted and considered by the Court, probable jurisdiction is noted and the case is placed on the summary calendar.

☆ U. S. GOVERNMENT PRINTING OFFICE: 1965 791032 289

In the Supreme Court of the United States

OCTOBER TERM, 1965

No.

UNITED STATES OF AMERICA, APPELLANT

v.

STANDARD OIL COMPANY

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF FLORIDA

JURISDICTIONAL STATEMENT

OPINION BELOW

The order and opinion of the district court dismissing the information (Appendix, *infra*, pp. 8–11; R. 6–9) is not reported.

JURISDICTION

The order of the district court dismissing the information on the ground that it does not state an offense under 33 U.S.C. 407 was entered on March 26, 1965. Notice of appeal to this Court was filed in the district court on Monday, April 26, 1965. The jurisdiction of this Court to review, on direct appeal, a judgment dismissing an information because of a construction of the statute on which it is founded is conferred by the 18 U.S.C. 3731.

778-881—65

STATUTES INVOLVED

33 U.S.C. 407 provides in pertinent part:

> It shall not be lawful to throw, discharge, or deposit, or cause, suffer, or procure to be thrown, discharged, or deposited either from or out of any ship, barge, or other floating craft of any kind, or from the shore, wharf, manufacturing establishment, or mill of any kind, any refuse matter of any kind or description whatever * * * into any navigable water of the United States, or into any tributary of any navigable water from which the same shall float or be washed into such navigable water * * *.

QUESTION PRESENTED

Whether respondent's discharge of valuable gasoline into navigable waters through a valve unintentionally left open violated 33 U.S.C. 407.

STATEMENT

An information under 33 U.S.C. 407, filed in the United States District Court for the Middle District of Florida, alleged that respondent did cause, suffer and procure to be discharged into the St. Johns River from its oil discharge terminal at Jacksonville, Florida "refuse matter" consisting of 100 octane aviation gasoline (R. 1; pp. 11–12, *infra*). Respondent moved to dismiss on the ground that the information failed to charge an offense (R. 2). A stipulation of fact, entered into solely for the purpose of the motion to dismiss, stated that employees of Standard Oil Company repaired and cleaned an 8-inch line connecting one of its bulk storage tanks with its dock facilities; that the

line was refilled with 100 octane aviation gasoline then stored in the bulk storage tank; and that, because the main shut-off valve at the dock-side end of the line had been unintentionally left open by the employees, approximately 300 gallons of the gasoline spilled out onto the dock and into the St. Johns River (R. 3–5). The district court dismissed the information on the ground that the accidental discharge of valuable and usable gasoline does not constitute discharge of "refuse matter" within the meaning of the statute.

THE QUESTION IS SUBSTANTIAL

The district court's construction of 33 U.S.C. 407 distinguishes between the discharge into navigable waters of commodities which are "valuable" or "usable" and those which are "valueless" or "useless." We believe that this distinction is contrary to the statutory purpose and not required by its language. It creates uncertainty in enforcement of the statute and renders its application questionable in instances involving the negligent discharge of petroleum products—a particular hazard to navigation.

1. The evident purposes for which 33 U.S.C. 407 and the penalty provisions of Sections 411 and 412 were enacted were to prevent the pollution of navigable waters and to protect navigation. If those purposes are to be achieved, the discharge into navigable waters of any foreign material—whether or not it is valuable to the person or corporation responsible for the discharge—must fall within the reach of the statute. The conduct prohibited demonstrates Congress' intent to sweep broadly across negligent as well as willful acts;

the statute subjects to a penalty anyone who "cause[s], suffer[s], or procure[s]" the specified discharge or deposit, without regard to that party's intention.[1] The statutory description of the sort of material which is encompassed within the prohibition should also be liberally construed to achieve the goals which Congress sought to realize. Since foreign substances which are desired by those responsible for their discharge may be hazardous to navigation and may pollute the waters into which they are deposited, and since the value of a usable commodity is not invariably an adequate safeguard against its unintentional discharge into navigable waters (particularly when the value of the commodity may be marginal and the necessary safeguards relatively expensive), the words "any refuse matter of any kind or description whatever" should be construed to cover valuable as well as valueless matter. The district court erred when, in reliance upon *United States* v. *The Delvalle,* 45 F. Supp. 746 (E.D. La.), it interpreted "refuse" as limiting the reach of the statute to matter which is rejected by the party responsible for the discharge. Viewed in context, we submit that "refuse" means any matter which is foreign or alien to the navigable waters and creates the risk of

[1] The stipulation in this case—which was entered into solely for purpose of the motion to dismiss—states that the line was "accidentally" left open by respondent's employees (R. 3). The circumstances of this "accident" strongly point to negligence, and we do not read the stipulation as indicating otherwise. Hence the facts of this case do not involve an unavoidable accident which, we agree, would probably not be encompassed even by the term "suffer."

pollution or danger to navigation which the statute was intented to prevent.[2]

2. Moreover, even if "refuse" is interpreted to refer only to materials which lack value, it seems clear that when, as here, the material loses its value upon escape from storage, it qualifies as "refuse matter" under 33 U.S.C. 407. On this question, the district court decision on which the court below relied conflicts with the decision of the Court of Appeals for the Second Circuit in *United States* v. *Ballard Oil Co. of Hartford,* 195 F. 2d 369. In that case oil was being pumped from the defendant's barge into a tank on shore, and negligent procedure caused an overflow into the river. The court, ruling that the stipulated facts "irrefragably proved an offence under [33 U.S.C. 407]," stated (*id.* at 371):

> The spilled oil was certainly "refuse matter"; it had escaped from the tank whither it could not be reclaimed; and for all useful industrial purposes it had ceased to exist. The word, "refuse," does not demand that the material must have been deliberately thrown away; it is satisfied by anything which has become waste, however useful it may earlier have been.

It has also been held that valuable fuel oil dumped into Honolulu harbor came within the meaning of "any refuse matter of any kind or description whatever." *United States* v. *Standard Oil Company of California,* 1962 American Maritime Cases 2531 (D.C.

[2] The Oil Pollution Act of 1924, 33 U.S.C. 433–437, does not cover the acts involved here—*i.e.*, pollution in non-tidal waters of the United States or from shore installations.

Hawaii). The Court of Appeals for the Ninth Circuit has also held "oil" to be included within the phrase "any refuse matter of any kind or description whatever." *La Merced,* 84 F. 2d 444. In the present case, the oil became "refuse"—because it was worthless—no later than the time when it left respondent's storage tanks.

3. There is no reason to depart, as the instant case does, from the general principle stated by this Court in *United States* v. *Republic Steel Corp.,* 362 U.S. 482, 489–491:

> * * * § 13 [33 U.S.C. 407] bans the discharge in any navigable water of "any refuse matter of any kind or description whatever other than that flowing from streets and sewers and passing therefrom in a liquid state." * * * We read the 1899 Act charitably in the light of the purpose to be served. The philosophy of the statement of Mr. Justice Holmes in *New Jersey* v. *New York,* 283 U.S. 336, 342, that "A river is more than an amenity, it is a treasure," forbids a narrow cramped reading either of § 13 [33 U.S.C. 407] or of § 10 [33 U.S.C. 403].

The district court's decision in the present case adopts an unduly narrow construction of the statute and thereby impairs its effectiveness with regard to the hazardous discharge of petroleum products into navigable waters.[2] Such incidents, we are advised by the Corps of Engineers, are relatively frequent.

[2] Respondent recognized the dangers involved here and called the Jacksonville Fire Department and the Coast Guard, which took measures to dissipate the gasoline (R. 4).

CONCLUSION

It is respectfully submitted that probable jurisdiction should be noted.

ARCHIBALD COX,
Solicitor General.

FRED M. VINSON, JR.,
Assistant Attorney General.

BEATRICE ROSENBERG,
PAUL C. SUMMITT,
Attorneys.

JUNE 1965.

APPENDIX

United States District Court, Middle District of Florida, Jacksonville Division

No. 64–298–Cr–J

UNITED STATES OF AMERICA

vs.

STANDARD OIL COMPANY

Order Granting Motion To Dismiss and Dismissing Information

On a prior date the Defendant's Motion to Dismiss (filed December 3, 1964) was argued and submitted by counsel for the respective parties. Both government and defense counsel were agreeable to the Court's considering admitted facts in the disposition of the Motion to Dismiss. At the Court's suggestion, counsel agreed to submit a written stipulation of facts to be considered by the Court solely in connection with the Motion to Dismiss. The case was taken off the trial calendar for March 8 to permit this to be accomplished.

Formal Stipulation, dated March 23, 1965, was filed by counsel for the parties March 25, 1965, and is considered by the Court in disposing of the Motion to Dismiss. The crucial facts now made to appear, in addition to those alleged in the information, are these: By the accidental failure to close a shut-off valve controlling a line connecting the Defendant's bulk storage facilities at its Talleyrand plant, Jacksonville, with its dock facilities, about 300 gallons of 100-octane aviation gasoline was permitted to spill out of the open valve onto the Defendant's dock and from thence into the

St. Johns River, which constitutes navigable waters of the United States. The shut-off valve was closed and the amount of spill was not such as to impede navigation, to damage property, or to cause any fire or explosion. The gasoline so accidentally discharged into the river was undiluted, unspoiled and unadulterated. It was sound, valuable and usable material, in no way damaged or impaired in value prior to the unintentional spillage from the open valve and into the navigable waters. The gasoline was not salvaged and was dissipated into the river by the current thereof and by fire hoses and boat wakes of the Jacksonville Fire Department and the United States Coast Guard.

The Information here is brought under Title 33, U.S.C., Section 407, which states in part:

> It shall not be lawful to throw, discharge, or deposit, or cause, suffer or procure to be thrown, discharged or deposited * * * any refuse matter of any kind or description whatever * * * into any navigable water of the United States.

The Information charges the offense in the statutory language, referring to the substance discharged into the river as "refuse matter". The critical question is whether or not this valuable and entirely usable material may be construed to fall into the description of "refuse matter". This is so since the admitted facts at the least show that the matter was "suffered" to be discharged.

The answer to this question seems to me to be found in *U.S.* v. *The Delvalle,* 45 F. Supp. 746, decided by District (later Circuit) Judge Wayne Borah in the Eastern District of Louisiana of this Circuit June 24, 1942. There, as here, valuable and usable matter (fuel oil in The Delvalle) was accidentally discharged into navigable waters through the failure of a mem-

ber of the ship's crew to completely close the shut-off valve.

Judge Borah's Conclusions of Law were short and are quoted herewith:

Conclusions of Law.

1. The statute in suit is a penal statute and must be strictly construed.

2. The word "refuse" is used in the statute in its adjective sense. Webster's New International Dictionary, 2nd Edition, Unabridged, defines the adjective, "refuse", as follows: "Refused; rejected; thrown aside or left as worthless or of no value; worthless; useless."

3. The oil involved in this proceeding was not refused, rejected, or thrown aside or left as worthless or of no value. It was not worthless nor useless. The accidental discharge of valuable, usable oil, under the circumstances set forth, does not constitute a throwing, discharging, or depositing of refuse matter, and is not a violation of the statute. 33 U.S.C.A. §§ 407, 411 and 412.

4. The libel should be dismissed.

Let a decree be entered accordingly.

Other cases are cited, Second Circuit, which might require a different conclusion. They are: *The Colombo,* 42 F. 2d 211, and *U.S.* v. *Ballard Oil Co. of Hartford, Inc.,* 195 F. 2d 369. The Second Circuit said in the latter case:

> The spilled oil was certainly "refuse matter"; it had escaped from the tank whither it could not be reclaimed; and for all useful industrial purposes it had ceased to exist. The word, "refuse", does not demand that the material must have been deliberately thrown away; it is satisfied by anything which has become waste, however useful it may earlier have been.

Since the question is open in this Circuit, I am constrained to follow Judge Borah's decision which to me seems sound and well reasoned, based as it is upon the dictionary definition of the term "refuse" not otherwise defined in the statute. This is especially so since we deal here with a penal statute which should be narrowly and strictly construed.

In consideration of the foregoing, it is

ORDERED that the Motion to Dismiss of the Defendant Standard Oil Company is granted and the Information is dismissed.

DONE AND ORDERED in Chambers at Jacksonville, Florida, this 26th day of March, 1965.

/s/ BRYAN SIMPSON,
Chief Judge, U.S. District Court.

United States District Court, Middle District of Florida, Jacksonville Division

No. 64–298—Cr–J
(33 USC 407)

UNITED STATES OF AMERICA
v.
STANDARD OIL COMPANY

The United States Attorney charges:

COUNT ONE

That on or about November 21, 1963, at Jacksonville, in the Middle District of Florida, Standard Oil Company did discharge and deposit and did cause, suffer and procure to be discharged and deposited from and out of its oil discharge terminal at the Standard Oil docks, 3117 Talleyrand Avenue, refuse matter, that is,

100 octane aviation gasoline, into the St. Johns River, navigable waters of the United States; in violation of Title 33, United States Code, Section 407.

EDWARD F. BOARDMAN,
United States Attorney.

By_____
Assistant United States Attorney.

U.S. GOVERNMENT PRINTING OFFICE: 1968

COPY

Office-Supreme Court, U.S.
FILED
JUL 24 1965
JOHN F. DAVIS, CLERK

In the Supreme Court of the United States

OCTOBER TERM, 1965

NO. 291

UNITED STATES OF AMERICA, APPELLANT

v.

STANDARD OIL COMPANY, APPELLEE

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF FLORIDA

MOTION TO DISMISS OR AFFIRM

EARL B. HADLOW
JOHN H. WILBUR
Attorneys for Appellee,
Standard Oil Company
P. O. Box 4099
Jacksonville, Florida

In the Supreme Court of the United States

OCTOBER TERM, 1965

NO. 291

UNITED STATES OF AMERICA, APPELLANT

v.

STANDARD OIL COMPANY, APPELLEE

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF FLORIDA

MOTION TO DISMISS OR AFFIRM

Appellee, Standard Oil Company, moves the Court to dismiss this appeal on the grounds that (a) Appellant's Notice of Appeal was not served upon Appellee or its attorneys and (b) the Notice of Appeal does not include proof of service on Appellee as required by the Rules of the Supreme Court of the United States.

In the alternative, Appellee moves the Court to affirm the judgment sought to be reviewed on the ground that it is manifest that the questions on which the decision of the cause depends are so unsubstantial as not to need further argument.

I. APPELLANT'S NOTICE OF APPEAL WAS NOT SERVED UPON APPELLEE OR ITS ATTORNEYS AND DOES NOT INCLUDE PROOF OF SERVICE ON APPELLEE AS REQUIRED BY THE RULES OF THE SUPREME COURT OF THE UNITED STATES.

The United States of America filed its Notice of Appeal in this cause on April 26, 1965, with the Clerk of the United States District Court for the Middle District of Florida. However, no copy of the Notice of Appeal was ever served upon, nor received by, Standard Oil Company or any of its attorneys, by mail or personal delivery or otherwise. While Standard Oil Company had received a copy of an unsigned letter dated April 26, 1965, from the Clerk of the District Court to the Clerk of this Court, transmitting an undescribed transcript, it remained in genuine ignorance of the fact that the Notice of Appeal had been filed or that Appellant intended to perfect or pursue its appeal until it received Appellant's Jurisdictional Statement on June 28, 1965. By virtue of Appellant's failure to serve the Notice of Appeal, this appeal has not been taken in conformity with Rule 10 of the Rules of the Supreme Court of the United States.

In addition, as there was no service of the Notice of Appeal upon the adverse party, there was no *proof* of service filed, as is clearly required by that portion of Rule 10 which provides:

> "The notice of appeal shall include proof of service on all adverse parties as prescribed by Rule 33. Failure to comply with these requirements shall be a sufficient reason for dismissing the appeal."

Rule 33 sets forth several methods by which proof of service may be shown, none of which were utilized by Appellant.

The Rule further provides:

> "Whenever proof of service is required by these rules, it must accompany or be endorsed upon the document in question at the time such document is presented to the clerk for filing."

Rule 5 of the Federal Rules of Civil Procedure, which requires service of all pleadings, has been given a strict and exacting construction by the various Circuit Courts of Appeal in connection with proof of service of documents.

In *Timmons v. United States,* 194 F.2d 357 (4th Cir. 1952), cert. den. 344 U.S. 844, 73 S.Ct. 59, 97 L.Ed. 656 (1952), the Circuit Court set forth its philosophy about the necessity for strict adherence to the requisites of service of pleadings upon the adverse party. The Court wrote:

> "In view of the important consequences that flow from the service of pleadings and other papers, the courts, quite rightly, have required the strictest and most exacting compliance with the rule when service is made by mail."

In addition, the Third Circuit has held, in determining the propriety of a motion for a new trial in a case in which the record contained no proof of service thereof, that the motion was not properly made and did not stay the running of the period for filing the notice of appeal. The Court stated:

> "The point we raise *sua sponte* is that unless service was made as prescribed by the rules, the notices of appeals were not filed within the appeal period prescribed by Rule 73(a). This court would then be

> without jurisdiction to adjudicate the appeals and they would have to be dismissed . . . . Service of motions as required by the rules must be demonstrable from the record on appeal and if such is not the case an appeal hereafter will be dismissed for want of jurisdiction."
>
> *Brest v. Philadelphia Transportation Co.*, 273 F.2d 22 (3rd Cir. 1959)

We respectfully submit, therefore, that the failure of Appellant to comply with the requirements of the rules of this Court is a sufficient reason for dismissing the appeal.

II. IT IS MANIFEST THAT THE QUESTIONS ON WHICH THE DECISION OF THE CAUSE DEPENDS ARE SO UNSUBSTANTIAL AS NOT TO NEED FURTHER ARGUMENT.

Under the Statute, the prohibited act is the discharge of "*refuse* matter of any kind or description" into the navigable waters of the United States. The District Court held that "the accidental discharge of valuable, usable oil . . . does not constitute a throwing, discharging or depositing of refuse matter, and is not a violation of the statute."

The alleged refuse was approximately 300 gallons of valuable aviation gasoline, accidentally spilled into a large river at a point where ocean going vessels are docked. It patently was not refuse of any sort or description. That aviation fuel is not refuse seems so obvious as to defy logical argument. Likewise, it is apparent that the use in the statute of the limiting word "refuse" was purposeful. Other, broader, descriptive words were always available and have been frequently used. Thus, in another part of the same statute, 33 U.S.C. 407, it is made unlawful to deposit "*material of any*

kind" upon a river bank where it may wash into navigable waters and impede navigation. By employing the word "refuse" in one clause and the word "material" in another, it is clear that a distinction is contemplated.

The "refuse" portion of the act was manifestly aimed at despoilers and was designed to prevent the use of our rivers as a convenient garbage disposal device. It seems equally plain that if the legislators had intended unlimited protection against any foreign matter, including the unintentional isolated spillage of valuable products, the statute would have employed the words "matter or material" rather than the limited word "refuse."

Since the latter portion of 33 U.S.C. 407 broadly prohibits the deposit on river banks of "material of any kind" which might be washed into navigable waters, (a violation only occurs if "navigation shall or may be impeded"), it is clear that the legislature contemplated a distinction between the word "refuse" and the word "material". Material is all inclusive. Refuse is limited to its normal and accepted meaning. Webster's New International Dictionary, 2nd Edition, Unabridged, defines the adjective "refuse" as follows: "refused; rejected; thrown aside or left as worthless or of no value; worthless; useless."

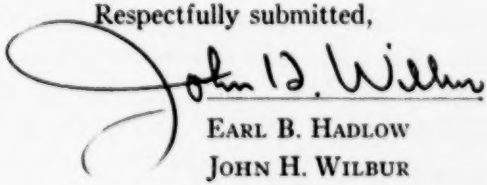
In its Jurisdictional Statement, Appellant contends that the question presented by its appeal is substantial because "the evident purpose" of the refuse act is to "protect navigation" and to achieve that protection the act must be construed to prohibit "the discharge into navigable waters of any foreign material". If that were in fact the true statutory

purpose then the prohibited act would have been the discharge of "any foreign material which impedes navigation" under which circumstance the narrower word "refuse" would not have been before this court. In this case, however, the result would have been the same under either approach, for the District Court held as a matter of fact that the acts of Appellee were "not such as to impede navigation, to damage property or to cause any fire or explosion".

Appellant's efforts to have this criminal statute construed broadly and liberally would result in the anomaly of criminal exposure to the driver of an automobile which accidentally skidded into a navigable stream or to the fisherman who accidentally lost his bait in navigable waters.

We submit that the issue involved in this case is *de minimis non curat lex*, and does not merit further argument. For these reasons, the judgment of the District Court should be affirmed.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I, John H. Wilbur, one of the attorneys of record for Standard Oil Company, Appellee, and a member of the Bar of the Supreme Court of the United States, hereby certify that, on the 23rd day of July, 1965, I served copies of the foregoing Motion to Dismiss or Affirm upon Appellant, United States of America, in compliance with Rule 33, paragraph 3(b), of the Rules of the Supreme Court of the United States, by mailing five (5) copies in a duly addressed envelope, with air mail postage prepaid, to The Solicitor General, Department of Justice, Washington 25, D. C., and by mailing an additional five (5) copies to Edward F. Boardman and William Hamilton, United States Attorney and Asst. United States Attorney respectively, Middle District of Florida, at 407 Post Office Building, Jacksonville, Florida.

John H. Wilbur

JOHN H. WILBUR
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Jacksonville, Florida

In the Supreme Court of the United States

OCTOBER TERM, 1965

No. 291

UNITED STATES OF AMERICA, APPELLANT

v.

STANDARD OIL COMPANY

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF FLORIDA

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION TO THE MOTION TO DISMISS

On July 26, 1965, appellee, Standard Oil Company, filed a motion to dismiss or affirm urging, *inter alia*, that the government's appeal be dismissed on the grounds that the notice of appeal did not include proof of service and that, in fact, the notice of appeal was not served as required by Rules 10 and 33 of the Rules of this Court.

It is true, we find, that the government failed to serve notice of the appeal on appellee. However, appellee does not claim that it has been prejudiced by

this inadvertent omission, nor would the facts support such a contention. The record consisted only of the information, a short agreed stipulation of facts and the opinion of the court below. The issue involved was clearly and unambiguously defined from the beginning. Appellee was mailed a copy of the district court's letter of transmittal of the record to this Court when the notice of appeal was filed and was promptly served with the government's Jurisdictional Statement. Time between the terms of this Court permits more than adequate opportunity for appellee to meet the government's position on the merits.

We accordingly submit that the absence of prejudicial circumstances and the substantial nature of the question presented warrant consideration of the case on the merits. The defect, of course, is not jurisdictional.

RALPH S. SPRITZER,
Acting Solicitor General.

AUGUST 1965

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In the Supreme Court of the United States

OCTOBER TERM, 1965

No. 291

UNITED STATES OF AMERICA, APPELLANT

v.

STANDARD OIL COMPANY (INCORPORATED IN KENTUCKY)

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF FLORIDA

BRIEF FOR THE UNITED STATES

OPINION BELOW

The order and opinion of the district court dismissing the information (R. 8–11) is not reported.

JURISDICTION

The order of the district court dismissing the information on the ground that it does not state an offense under 33 U.S.C. 407 was entered on March 26, 1965 (R. 8–11). Notice of appeal to this Court was filed in the district court on April 26, 1965 (R. 12–13), and probable jurisdiction was noted on October 11, 1965

(R. 14). The jurisdiction of this Court rests upon 18 U.S.C. 3731.

STATUTES INVOLVED[1]

Section 13 of the Rivers and Harbors Act of March 3, 1899, 30 Stat. 1121, 1152, 33 U.S.C. 407, provides in pertinent part:

> SEC. 13. That it shall not be lawful to throw, discharge, or deposit, or cause, suffer, or procure to be thrown, discharged, or deposited either from or out of any ship, barge, or other floating craft of any kind, or from the shore, wharf, manufacturing establishment, or mill of any kind, any refuse matter of any kind or description whatever other than that flowing from streets and sewers and passing therefrom in a liquid state, into any navigable water of the United States, or into any tributary of any navigable water from which the same shall float or be washed into such navigable water; and it shall not be lawful to deposit, or cause, suffer, or procure to be deposited material of any kind in any place on the bank of any navigable water, where the same shall be liable to be washed into such navigable water, either by ordinary or high tides, or by storms or floods, or otherwise, whereby navigation shall or may be impeded or obstructed: *Provided* * * *

Section 16 of the Rivers and Harbors Act of March 3, 1899, 30 Stat. 1121, 1153, 33 U.S.C. 411, 412, provides in pertinent part:

> SEC. 16. That every person and every corporation that shall violate, or that shall know-

[1] Other statutes cited in our argument are reproduced in Appendix A, pp. 23–25, *infra*.

ingly aid, abet, authorize, or instigate a violation of the provisions of sections thirteen, fourteen, and fifteen of this Act shall be guilty of a misdemeanor, and on conviction thereof shall be punished by a fine not exceeding twenty-five hundred dollars nor less than five hundred dollars, or by imprisonment (in the case of a natural person) for not less than thirty days nor more than one year, or by both such fine and imprisonment, in the discretion of the court, one-half of said fine to be paid to the person or persons giving information which shall lead to conviction.

QUESTION PRESENTED

Whether respondent's discharge of valuable gasoline into navigable waters through a valve unintentionally left open violated 33 U.S.C. 407.

STATEMENT

An information under 33 U.S.C. 407, filed in the United States District Court for the Middle District of Florida, alleged that respondent suffered to be discharged into the St. Johns River from its oil discharge terminal at Jacksonville, Florida, "refuse matter" consisting of 100 octane aviation gasoline (R. 3). Respondent moved to dismiss on the ground that the information failed to charge an offense (R. 4). A stipulation of fact was entered into solely for the purpose of the motion to dismiss. It stated that employees of Standard Oil Company repaired and cleaned an 8-inch line connecting one of its bulk storage tanks with its dock facilities; that the line was refilled with 100 octane aviation gasoline then stored

in the bulk storage tank; and that, because the main shut-off valve at the dock-side end of the line had been unintentionally left open by the employees, approximately 300 gallons of the gasoline spilled out onto the dock and into the St. Johns River (R. 5–7). The district court dismissed the information on the ground that the accidental discharge of valuable and usable gasoline does not constitute discharge of "refuse matter" within the meaning of the statute (R. 8–11).

SUMMARY OF ARGUMENT

The statute which appellee was charged with violating derives from an 1899 codification and consolidation of statutes which were designed to prohibit willful or negligent discharge into navigable waters of matter which would obstruct navigation or pollute the water. It is clear from the legislative debate that Congress intended no substantive change in the law at that time. Since the prohibitions of the predecessor anti-pollution statute first identified various kinds of deposits which might be valuable to their owner and then dealt comprehensively with the discharge of "any other matter of any kind," it is clear that Congress did not intend to distinguish, under that statute, between valuable and useless matter. The insertion of the word "refuse" in the 1899 codification should not, therefore, be read as effecting the distinction relied upon by the district court. Nor does anything in the history of the Oil Pollution Act warrant a contrary construction.

The word "refuse" in the statute does not have the meaning given to it by the district court since that

would be inconsistent with the legislative purpose. Valuable matter can obstruct navigation or pollute water no less than useless material. And the district court's construction would produce anomalous differences in result under various clauses in the same statute. "Refuse" refers, in our view, not to the value which the material has to its owner but to its relation vis-à-vis the navigable waters into which it is discharged. If it is foreign matter—*i.e.*, likely to pollute the water or endanger navigation—it constitutes "refuse." Alternatively, "refuse" may refer to the value of the material after it has been discharged; if it is worth salvaging it may not qualify as "refuse." Under either of these constructions the gasoline in this case was "refuse," and the charge in the information, if based on proof of negligence, was covered by the statute.

ARGUMENT

The statute which appellee was charged with having violated (33 U.S.C. 407) prohibits the discharge of "any refuse matter of any kind or description whatever" into navigable waters. The only issue in this case is whether something which has not been discarded or rejected by its owner can constitute "refuse matter." Relying on the meaning attributed to the word "refuse" in *United States* v. *The Delvalle*, 45 F. Supp. 746 (E.D. La.), the district court held here that the word "refuse" limits the reach of the statute to matter which has been cast aside as useless by its owner. It dismissed the information because of the stipulation that prior to its discharge into the river appellee's gasoline was "sound, valuable and usable

material" (R. 6). In our view this construction of the words "refuse matter" conflicts with the history of 33 U.S.C. 407. The statute can and should be read, consistently with the objectives of the Congress which enacted it, as prohibiting the discharge of any material, irrespective of value, which would pollute the water or obstruct navigation.

I

CONGRESS INTENDED TO PROHIBIT THE DISCHARGE OF ALL FOREIGN MATTER INTO NAVIGABLE WATERS

The early criminal statutes dealing with discharges into navigable waters manifested Congress' concern with two interrelated problems: obstruction to navigation and pollution. An Act of August 5, 1886, "making appropriations for the construction, repair, and preservation of certain public works on rivers and harbors" (24 Stat. 310), also made it unlawful "to cast, throw, empty, or unlade * * * any ballast, stone, slate, gravel, earth, slack, rubbish, wreck, filth, slabs, edging, sawdust, slag, or cinders, or other refuse or mill-waste of any kind, into New York Harbor" (*id.* at 329). Without repealing the 1886 statute, Congress in 1888 enacted a law "to prevent obstructive and injurious deposits within the harbor and adjacent waters of New York City" (25 Stat. 209). It provided:

> That the placing, discharging, or depositing, by any process or in any manner, of refuse, dirt, ashes, cinders, mud, sand, dredgings, sludge, acid, or any other matter of any kind, other than that flowing from streets, sewers, and passing therefrom in a liquid state, in the tidal

> waters of the harbor of New York, or its adjacent or tributary waters, or in those of Long Island Sound, within the limits which shall be prescribed by the supervisor of the harbor, is hereby strictly forbidden, and every such act is made a misdemeanor * * *.

A comparison of the 1886 and 1888 Acts discloses that the latter not only enumerated different kinds of deposits but that it prohibited discharge of "any other matter of any kind" whereas the former dealt only with "other refuse or mill-waste of any kind." The reference in the Act's caption to "injurious" deposits as well as "obstructive" ones demonstrates that Congress was concerned not only with physical impediments to navigation, but with matter that might pollute the water. And the inclusion in the list of forbidden deposits of mud, sand and acid—which may pollute but do not obstruct—reinforces the inference that the 1888 statute was an anti-pollution measure.

The protections afforded initially to New York harbor were extended in 1890 and 1894 to other navigable waters. A specific anti-obstruction provision, included as Section 6 of the Rivers and Harbors Appropriation Act of 1890, provided (26 Stat. 453):

> That it shall not be lawful to cast, throw, empty, or unlade, or cause, suffer, or procure to be cast, thrown, emptied, or unladen, either from or out of any ship, vessel, lighter, barge, boat, or other craft, or from the shore, pier, wharf, furnace, manufacturing establishments, or mills of any kind whatever, any ballast, stone, slate, gravel, earth, rubbish, wreck, filth, slabs, edgings, sawdust, slag, cinders, ashes, refuse or

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other waste of any kind, into any port, road, roadstead, harbor, haven, navigable river, or navigable waters of the United States *which shall tend to impede or obstruct navigation,* or to deposit or place or cause, suffer, or procure to be deposited or placed, any ballast, stone, slate, gravel, earth, rubbish, wreck, filth, slabs, edgings, sawdust, or other waste in any place or situation on the bank of any navigable waters, where the same shall be liable to be washed into such navigable waters, either by ordinary or high tides, or by storm or floods, or otherwise, whereby navigation shall or may be impeded or obstructed. [Emphasis added.]

The language of the 1888 New York harbor statute—which, we submit, was directed principally at pollution—was substantially repeated in an 1894 statute prohibiting deposits of the enumerated sort in the "waters of any harbor or river of the United States, for the improvement of which money has been appropriated by Congress" (28 Stat. 363). The enumeration of forbidden acts was the same in this statute as in the 1888 act, and it concluded with the words "or any other matter of any kind."

By 1896, therefore, Congress had legislated separately with respect to the dangers of pollution and obstruction in navigable waters other than New York harbor. In that year Congress directed the Secretary of War to make a compilation of existing general laws protecting navigable waters and to submit recommendations as to "revision, emendation, or enlargement of the said laws as, in his judgment, will be advantageous to the public interest." 29 Stat. 234. The Secretary submitted the full text of existing laws and

a proposed act "Revising and Enlarging Laws for the Protection of Navigable Waters." H. Doc. No. 293, 54th Cong., 2d Sess. The compilation noted the 1894 pollution statute and the 1890 obstruction statute under the heading of "Depositing material in navigable waters." *Id.* at 4–5. The "Proposed Act" codified these two provisions as follows (*id.* at 9–10):

> That it shall not be lawful to throw, discharge, or deposit, or cause, suffer, or procure to be thrown, discharged, or deposited either from or out of any ship, barge, or other floating craft of any kind, or from the shore, wharf, manufacturing establishment, or mill of any kind, any refuse matter of any kind or description whatever other than that flowing from streets and sewers and passing therefrom in a liquid state, into any navigable water of the United States, or into any tributary of any navigable water; and it shall not be lawful to deposit, or cause, suffer, or procure to be deposited material of any kind in any place on the bank of any navigable water, or on the bank of any tributary of any navigable water, where the same shall be liable to be washed into such navigable water, either by ordinary or high tides, or by storms or floods, or otherwise, whereby navigation shall or may be impeded or obstructed * * *.

In 1899, Senator Frye of the Senate Commerce Committee presented the bill on the floor of the Senate as an amendment to the river and harbor appropriation act then under consideration. He assured the Senate that the Committee on Commerce had examined it very carefully and (32 Cong. Rec. 2296–2298)

> found it to be entirely correct and in accord with the statutes now in existence, only scattered, as I said before, from the beginning of the statutes down through to the end, with some brief amendments, in order to make the meaning of the statutes more clear. So I ask that this amendment may be inserted. I do not think there is any necessity of reading it. It is only these sections of the Revised Statutes codified.

With continued assurances that no material change had been made in the law, the Senate passed the amendment. The House also passed the amendment after it was informed that " the bill as now agreed upon and presented also includes a codification of existing laws pertaining to rivers and harbors, though containing no essential changes in the existing law." *Id.* at 2923. This codification of the prior anti-pollution and anti-obstruction policies of Congress thereby became Section 13 of the River and Harbor Act of 1899—the present 33 U.S.C. 407 (30 Stat. 1152).[2]

This history, we submit, demonstrates convincingly that it was Congress' intention in 1899 to encompass within the words "refuse matter of any kind or description whatever" the designations of forbidden deposits included in *both* the 1890 and 1894 acts—*i.e.*,

[2] The New York harbor statutes remained in effect and, having been extended to the harbors of Hampton Roads and Baltimore (72 Stat. 970), are now found at 33 U.S.C. 441–451. The New York statute has been held to apply not only to waste oil which was unintentionally discharged (*The Albania*, 30 F. 2d 727 (S.D. N.Y.)), but to valuable oil which leaked from an oil steamer's intake valve which had negligently been left open (*The Colombo*, 42 F. 2d 211 (C.A. 2)).

"ballast, stone, slate, gravel, earth, rubbish, wreck, filth, slabs, edgings, sawdust, slag, cinders, ashes, refuse, or other waste of any kind" *and* "refuse, dirt, ashes, cinders, mud, sand, dredgings, sludge, acid, *or any other matter of any kind*". [Emphasis added.] The full colloquy on the floor of the Senate (which we reprint as Appendix B, pp. 27–32, *infra*) rebuts any suggestion that Congress intended to effectuate a change in the existing law, much less that it wished to narrow the reach of the statute. A limitation of the statute to "valueless" or "useless" matter—such as that relied on by the district court—is inconsistent with the obvious Congressional purpose. The discharge of valuable acid, for example, was expressly covered by the act of 1894; it would not be covered under the district court's interpretation of the successor statute. In holding that oil was included in the words "any other matter of any kind," the Court of Appeals for the Second Circuit observed in *The Colombo,* 42 F. 2d 211, 212, that "[i]n 1888, when [the New York harbor statute] was passed, oil-burning steamers were not known, and it was almost certainly for this reason that oil was not specifically included, for in recent years this has become a great nuisance and a serious danger to the harbor." The same is true of the gasoline deposit involved here. Although gasoline was not specifically named in the 1894 statute, a fair reading *ejusdem generis* of "any other matter of any kind" would obviously include it.

Failure to examine the legislative history of the

1899 codification resulted in a misreading of the statute approximately 20 years after its enactment. A United States District Court of the Eastern District of Virginia held in 1922 that Section 13 dealt only with material which obstructs navigation and not with polluting non-obstructing deposits.[3] On the basis of this misconstruction, the Chief of Engineers advised the Chairman of the Senate Committee on Commerce that the statute "is not applicable to prevent the discharge of oil upon navigable waters" and requested legislation to prohibit oil pollution. S. Rep. No. 901, 67th Cong., 2d Sess. (1922). The Secretary of War, in an earlier letter to the House Committee on Rivers and Harbors, had observed that although his department had assumed that Section 13 covered the discharge of oil, "the question has not been definitely determined judicially."[4] Apparently fearing the precise misreading which the Virginia district

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[3] This construction was based on the words which immediately precede the statute's first proviso—"whereby navigation shall or may be impeded or obstructed." It is clear, we submit, that these words in context refer not to the section's first clause, which prohibits the deposit of any refuse matter directly into navigable waters, but to the prohibition upon depositing material "on the bank of any navigable water." In other words, the statute makes it criminal to place obstructing *or* polluting "refuse matter" directly into a river.

[4] The Secretary did say, however, that the oil menace in New York harbor was being managed under the New York harbor act of 1888. H. Rep. No. 1569, 67th Cong., 4th Sess., p. 2 (1923). As we have shown, Congress intended to impose the same restrictions as applied to New York harbor on deposits in all navigable waters for which it had appropriated funds. See pp. 6–10, *supra*.

court later gave Section 13, the Secretary had previously requested an amendment to that provision which would have expressly covered oil pollution.[5] H. Rep. No. 1569, 67th Cong., 4th Sess., pp. 2–3 (1923).

The Oil Pollution Act of 1924 (33 U.S.C. 431–437) was passed at the next session of Congress. It prohibited the discharge of oil by vessels into coastal waters, but did not cover deposits into inland navigable waters or the discharge of oil from shore stations. The Act was explicitly made applicable "in addition to" previously existing laws and was "not [to] be construed as repealing, modifying, or in any manner affecting the provisions of those laws," 33 U.S.C. 437. It is apparent from both the House and Senate reports that a significant factor in the Act's passage was the erroneous construction given to Section 13 by the Virginia district court. Both 1924 reports included no correspondence other than the letter from the Chief of Engineers (p. 12, *supra*) and an accompanying letter from the United States Attorney for the Eastern District of Virginia reporting on that decision. See H. Rep. No. 794, 68th Cong., 1st Sess. (1924); S. Rep. No. 66, 68th Cong., 1st Sess. (1924).

The fact that Congress, in order to resolve all doubts, passed the Oil Pollution Act under the above

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[5] The proposed amendment, which was reported on by the House Committee would also have moved the words "where navigation shall or may be impeded or obstructed" to the beginning of the clause relating to deposits on banks of navigable rivers, thereby foreclosing any construction which would make it applicable to other clauses. See note 3, *supra*.

circumstances, does not mean that Section 13 i
inapplicable to deposits of oil or other similar prod
ucts. In 1936 the Court of Appeals for the Nint
Circuit rejected the contention that the represents
tions made to Congress with respect to Section 1
by the Chief of Engineers in 1922 narrowed the appli
cation of that statute. In *La Merced*, 84 F. 2d 44
(C.A. 9), which involved a charge under Section 1
that oil had been discharged into Lake Union in th
State of Washington, the court observed that the com
mittee report on the Oil Pollution Act "neither say
nor implies what the intention of Congress was wit
respect to a statute enacted some 35 years prior t
that time" (84 F. 2d at 446)—*i.e.*, the New York har
bor act of 1888 upon which the later acts were mod
eled. The intent of Congress in 1899 was, as we hav
shown, to prohibit deposits of any polluting matter o
any kind, and the statute should be applied consist
ently with that intent.[4]

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[4] Prior to the *La Merced* decision, *supra*, the Army has sough
clarifying legislation clearly to prohibit oil pollution of inlan
navigable waters and of coastal waters from shore stations. Se
H. Doc. No. 417, 69th Cong., 1st Sess., pp. 19-20, 27; S. Rep. No
2225, 74th Cong., 2d Sess. In 1962, the Secretary of the Army
wrote to the Chairman of the House Committee on Public Work
(certified letter filed with this Court):

> The River and Harbor Act of March 3, 1899 (33 U.S.C
> 407), prohibits the discharge of "any refuse matter of any
> kind or description whatever" into any navigable water o
> the United States. Insofar as the interests of this Depart
> ment in preventing impediments to navigation are con
> cerned, this existing law has been interpreted by this De
> partment as providing adequate means of controlling the

II

THE STATUTE DRAWS NO DISTINCTION BETWEEN THE DISCHARGE OF VALUABLE AND USELESS MATTER

The history of Section 13 (pp. 6–10, *supra*) demonstrates that the provision was intended to cover deposits which could be "injurious" as well as those which are "obstructive." The broad remedial purpose served by the statute is also reflected in Congress' decision to subject to a criminal sanction negligent as well as willful acts; the statute applies to any one who "cause[s], suffer[s], or procure[s]" the specified discharge or deposit, without regard to his intention.[1] And this Court approved a liberal construction of the statute in *United States* v. *Republic Steel Corp.*, 362 U.S. 482, 489–491:

> * * * § 13 [33 U.S.C. 407] bans the discharge in any navigable water of "any refuse matter of any kind or description whatever other than that flowing from streets and sewers and pass-

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discharge of harmful materials, including oil, into navigable waters of the United States. However, it is considered desirable specifically to prohibit the dumping of oil wastes into all the navigable waters of the United States, as now provided in the Oil Pollution Act with respect to coastal waters. This would remove any doubt as to Federal jurisdiction over discharge of oil into all the navigable waters of the United States.

[1] The stipulation in this case—which was entered into solely for the purpose of the motion to dismiss—states that the line was "accidentally" left open by appellee's employees (R. 5). The circumstances of this "accident" strongly point to negligence, and we do not read the stipulation as indicating otherwise. Hence the facts of this case do not involve an unavoidable accident, as by an Act of God, which may not be encompassed even by the term "suffer."

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> ing therefrom in a liquid state." * * * We read the 1899 Act charitably in the light of the purpose to be served. The philosophy of the statement of Mr. Justice Holmes in *New Jersey* v. *New York,* 283 U.S. 336, 342, that "A river is more than an amenity, it is a treasure," forbids a narrow cramped reading either of § 13 [33 U.S.C. 407] or of § 10 [33 U.S.C. 403].

By reading the word "refuse" as limiting the statute's application to valueless matter, the district court unjustifiably narrowed the reach of Section 13. Material which is valuable to its owner and which is negligently deposited in a river is no less a hazard to navigation than useless matter; it presents the same danger of pollution as matter which is knowingly discarded. Congress patently drew no such distinction when it passed Section 13's predecessor statute in 1894 and prohibited the discharge of "any other matter of any kind" (p. 8, *supra*), and, we submit, it intended no such distinction when it inserted the word "refuse" into the 1899 codification.

It is true, of course, that an owner is likely to take more precautions to prevent negligent discharges of valuable matter than of material which is useless to him. Hence a legislature could reasonably conclude that it need provide criminal sanctions only against the discharge of waste products, leaving the control of valuable materials to an owner's self-interest. But there is no indication whatever in the statute or in its legislative history that Congress made any such judgment. In fact, the anomalous results which flow from the district court's reading of the statute demonstrate that Congress had no such intention. The second

clause of Section 13 makes it unlawful to "cause, suffer, or procure to be deposited *material of any kind*" [emphasis added] on the bank of any navigable river where such material might be washed into the water and impede or obstruct navigation. That clause, not being limited to "refuse" matter, would patently apply—even by the district court's reasoning—to a valuable article as well as to a useless one. Under the district court's limiting construction of "refuse matter," it would appear that Congress had in Section 13 made criminal the negligent deposit of obstructive valuable material on a river bank but had not similarly prohibited its negligent discharge directly into the river. Whatever self-interest might be thought sufficient to regulate the latter conduct exists with respect to the former, and the damage is obviously more certain when the objectionable matter is discharged directly into the river. Congress could hardly be assumed to have intended to distinguish for purposes of criminal punishment between valuable and valueless matter deposited directly into navigable waters but, at the same time, not to have made that distinction with respect to matter placed on the banks of navigable waters.

Moreover, while there is surely a difference between the caution with which an owner guards his valuable property and the care which he is likely to take with waste, the value of property is not invariably an adequate safeguard against its negligent discharge into navigable waters. If the value of the commodity is marginal and the necessary safeguards expensive, inadequate precautionary measures may be taken to

prevent unintentional discharge even of matter which has not been rejected or discarded. The most effective remedial measure in this area is a statute prohibiting the negligent discharge or deposit into navigable waters of any foreign matter—and the history of Section 13 establishes that Congress sought to enact the broadest remedy possible.

This construction does not, by any means, read the word "refuse" out of Section 13. That word can mean either of two things: (1) It could be read to mean that Section 13 covers only the discharge of *foreign* matter into navigable waters. If pure water is thrown into a river, for example, it would not constitute "refuse matter," and, indeed, it should not be deemed within the statute even if the water is useless to its owner and has been rejected or thrown away. This construction of the word "refuse" is most consistent with the purpose of Section 13 since it makes the effect of the material on the navigable waters the touchstone of legality; only such matter as might pollute the water or obstruct navigation is considered "refuse." (2) Alternatively, "refuse" may be taken to mean, as Judge Learned Hand suggested in *United States* v. *Ballard Oil Co.*, 195 F. 2d 369 (C.A. 2), anything which becomes useless and unsalvageable once it is discharged into the water.[8] This would exempt

[8] The *Ballard Oil* case involved oil which was being pumped from the defendant's barge into a tank on shore, and it was negligently permitted to overflow into the river. Ruling that the stipulated facts "irrefragably proved an offence" under Section 13, the court stated (195 F. 2d at 371):

> The spilled oil was certainly "refuse matter"; it had escaped from the tank whither it could not be reclaimed,

from the statute's reach any matter which can be salvaged and is worth salvaging,[8] presumably on the ground that the owner's self-interest would insure that it did not remain a permanent menace to navigation or to the purity of the water. The gasoline in the present case "was dissipated into the river" (R. 6), so that it became "refuse" within this proposed construction. See also *United States* v. *Standard Oil Co. of California*, 1962 American Maritime Cases 2531 (D. Hawaii).

The fact that Section 13 renders negligent conduct criminally punishable is not a reason for reading it narrowly in a manner which would defeat its legislative purpose. As this Court observed in *United States* v. *Dotterweich*, 320 U.S. 277, 285, "[i]n such matters the good sense of prosecutors, the wise guidance of trial judges, and the ultimate judgment of juries must be trusted." We are informed by the

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and for all useful industrial purposes it had ceased to exist. The word, "refuse," does not demand that the material must have been deliberately thrown away; it is satisfied by anything which has become waste, however useful it may earlier have been.

[8] The rule should not apply where the cost of salvage is equal to or greater than the value of the material. In such cases, the tendency is for the owner to abandon the property and leave salvage to the government. This fact is dramatically demonstrated by *United States* v. *2,220,000 pounds of Chlorine Cargo*, No. 22,148, presently pending in the Court of Appeals for the Fifth Circuit, in which a barge carrying $85,000 worth of chlorine was negligently sunk in the Mississippi River. Abandonment by the owners resulted in government salvage operations costing $1,565,000 engineering expense and $1,516,000 public health and safety expense.

Office of the Chief of Engineers that Section 13 is the basis of prosecution in approximately one-third of the oil pollution cases reported to the Department of Justice, and that it is necessary in the program for control of oil pollution. It is, of course, true that the incidents vary in seriousness and that not all negligent discharges of petroleum products warrant prosecution. Whether an incident is serious enough to justify deterrence of its repetition by criminal sanctions may depend on factors such as the hazard created by the discharge,[10] the culpability of the defendant, or the volume of the discharge.[11] Each of these is a circumstance which may call "for conscience and circumspection in prosecuting officers" (*Nash* v. *United States,* 229 U.S. 373, 378), but it does not justify a construction of the statute which would render it inapplicable to many of the evils which it was designed to prevent.

We submit that the origin of Section 13, its administrative interpretation and the weight of judicial decisions support the view that the statute makes no distinction between valuable and useless matter. The contrary opinion of the district court in this case and

[10] Appellee recognized the dangers involved here and called the Jacksonville Fire Department and the Coast Guard, which took measures to dissipate the gasoline (R. 5–6).

[11] In *Ballard Oil*, the court noted that the oil spread on the surface of the water for a mile upstream and three miles downstream. It flowed into a boat basin where it was about one inch thick on top of the water, and where it covered all the boats with a black tarry-looking mass. 195 F. 2d at 370.

in *United States* v. *The Delvalle,* 45 F. Supp. 746 (E.D. La.), on which the district court here relied, are in error.

CONCLUSION

For the foregoing reasons, we respectfully submit that this Court should reverse the judgment below and reinstate the information.

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NOVEMBER 1965.

APPENDIX A

Section 3 of the Rivers and Harbors Act of August 5, 1886, 24 Stat. 329, provided in part:

> SEC. 3. It shall not be lawful to cast, throw, empty, or unlade, or cause, suffer, or procure to be cast, thrown, emptied, or unladen, either from or out of any ship, vessel, lighter, barge, boat, or other craft, or from the shore, pier, wharf, or mills of any kind whatever, any ballast, stone, slate, gravel, earth, slack, rubbish, wreck, filth, slabs, edgings, sawdust, slag, or cinders, or other refuse or mill-waste of any kind, into New York Harbor: * * *

Section 1 of the New York Harbor Act of June 29, 1888, 25 Stat. 209, provides in part:

> *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That the placing, discharging, or depositing, by any process or in any manner, of refuse, dirt, ashes, cinders, mud, sand, dredgings, sludge, acid, or any other matter of any kind, other than that flowing from streets, sewers, and passing therefrom in a liquid state in the tidal waters of the harbor of New York, or its adjacent or tributary waters, or in those of Long Island Sound, within the limits which shall be prescribed by the supervisor of the harbor, is hereby strictly forbidden, and every such act is made a misdemeanor * * *.

Section 6 of the Rivers and Harbors Act of September 19, 1890, 26 Stat. 453, provides in part:

> SEC. 6. That it shall not be lawful to cast, throw, empty, or unlade, or cause, suffer, or

> procure to be cast, thrown, emptied, or unladen, either from or out of any ship, vessel, lighter, barge, boat, or other craft, or from the shore, pier, wharf, furnace, manufacturing establishments, or mills of any kind whatever, any ballast, stone, slate, gravel, earth, rubbish, wreck, filth, slabs, edgings, sawdust, slag, cinders, ashes, refuse, or other waste of any kind, into any port, road, roadstead, harbor, haven, navigable river, or navigable waters of the United States which shall tend to impede or obstruct navigation, or to deposit or place or cause, suffer, or procure to be deposited or placed, any ballast, stone, slate, gravel, earth, rubbish, wreck, filth, slabs, edgings, sawdust, or other waste in any place or situation on the bank of any navigable waters where the same shall be liable to be washed into such navigable waters, either by ordinary or high tides, or by storms or floods, or otherwise, whereby navigation shall or may be impeded or obstructed * * *.

Section 6 of the Rivers and Harbors Act of August 18, 1894, 28 Stat. 363, provides in part:

> SEC. 6. That it shall not be lawful to place, discharge, or deposit, by any process or in any manner, ballast, refuse, dirt, ashes, cinders, mud, sand, dredgings, sludge, acid or any other matter of any kind other than that flowing from streets, sewers, and passing therefrom in a liquid state, in the waters of any harbor or river of the United States, for the improvement of which money has been appropriated by Congress * * *.

Section 3 of the Oil Pollution Act of June 7, 1924, 43 Stat. 605, 33 U.S.C. 433, provides:

> That, except in case of emergency imperiling life or property, or unavoidable accident, collision, or stranding, and except as otherwise permitted by regulations prescribed by the Secretary as hereinafter authorized, it shall be

unlawful for any person to discharge, or suffer, or permit the discharge of oil by any method, means, or manner into or upon the coastal navigable waters of the United States from any vessel using oil as fuel for the generation of propulsion power, or any vessel carrying or having oil thereon in excess of that necessary for its lubricating requirements and such as may be required under the laws of the United States and the rules and regulations prescribed thereunder. The Secretary is authorized and empowered to prescribe regulations permitting the discharge of oil from vessels in such quantities, under such conditions, and at such times and places as in his opinion will not be deleterious to health or sea food, or a menace to navigation, or dangerous to persons or property engaged in commerce on such waters, and for the loading, handling, and unloading of oil.

APPENDIX B

32 Cong. Rec. 2296–2297 (February 24, 1899)

Mr. FRYE. By an act of Congress approved June 3, 1896, the War Department was instructed to codify the laws touching rivers and harbors. We have passed laws in each river and harbor act, and they are scattered from the beginning of the Revised Statutes through to the end, and some of them are a little bit crude. The War Department have attended to that work and reported to the House. Now, they have placed in our hands all but two sections of the law, and they are contained in this bill, with some very few amendments to make the laws more certain. There has been some contention about the laws hitherto, the Attorneys-General disagreeing.

This amendment of three pages which I now offer is the result of their work. As it is all contained in the Revised Statutes, I do not see any necessity of reading this long amendment. It was referred to a subcommittee of the Committee on Commerce, and they examined it very carefully and found it to be entirely correct and in accord with the statutes now in existence, only scattered, as I said before, from the beginning of the statutes down through to the end, with some brief amendments, in order to make the meaning of the statutes more clear. So I ask that this amend-

ment may be inserted. I do not think there is any necessity of reading it. It is only these sections of the Revised Statutes codified.

Mr. TELLER. I do not want to detain the Senate unnecessarily, but we have taken a good many things on faith in this bill, it seems to me. Here we have a provision to build a canal which I do not believe is acceptable to any man. I do not believe anybody is satisfied with it, and yet when we suggest amendments we are told, "Oh, well, that will be fixed somewhere else." I insist upon the reading of the amendment.

Mr. PETTIGREW. Is the amendment printed?

Mr. FRYE. It is printed. It came in a Senate or House document. It was prepared by the War Department.

Mr. PETTIGREW. Do the amendments come from the Committee on Commerce?

Mr. FRYE. They came from the War Department to the Committee on Commerce and were reported by the Committee on Commerce.

Mr. PETTIGREW. The committee have duly considered them?

Mr. FRYE. Oh, yes, and examined them through a subcommittee with great care.

Mr. CHANDLER. I wish to ask the Senator whether there is any change made in the existing law by the amendments?

Mr. FRYE. Very slight changes to remove ambiguities. I have here a letter from Colonel Mackenzie, who understands the laws about rivers and harbors and understands rivers and harbors better than any

man living, and I propose to have that placed in the Record.

Mr. PETTIGREW. Is it in regard to these amendments?

Mr. FRYE. It is.

Mr. PETTIGREW. Let it be read.

The VICE-PRESIDENT. The Secretary will read as requested.

The Secretary read as follows:

> In addition to the matter above referred to I beg to invite your attention to the following:
>
> In accordance with the direction of Congress in section 2 of the river and harbor act of June 3, 1896, the compilation of all general laws that had been enacted from time to time by Congress for the maintenance, preservation, and protection of navigable waters of the United States was prepared and submitted to Congress, together with a draft of an act embodying such provisions and enlargements of the aforesaid laws as the experience of this office had shown to be advantageous to the public interests. The draft submitted covered every subject embraced in the existing laws with two exceptions, and was printed in House Document No. 293, Fifty-fourth Congress, second session, a copy of which is inclosed.
>
> This proposed act I believe to be clear from ambiguity, and better adapted to serve the interests of commerce and navigation than the laws in their present form. The proposed act has 13 sections, the last 3 of which (sections 11 to 13) were incorporated by the House Committee on Rivers and Harbors in the pending bill. (See sections 6 and 7 of H.R. 11795).
>
> In my opinion it would be to the public interest to incorporate in the bill the remaining 10 sections of the proposed act, and I can con-

ceive of no objection thereto, as these sections contain no new matter, but simply revise and make clearer and more definite laws that have been already enacted.

Sections 1 and 2 of the proposed act are intended to replace section 7 of the act of September 19, 1890, as amended by section 3 of the act of July 13, 1892, and I beg to invite your attention to the accompanying brief, giving special reasons why this particular law should be revised and amended.

Very respectfully,

A. MACKENZIE,
Lieutenant-Colonel, Corps of Engineers.

Mr. PETTIGREW. I do not like to object, but I think this is a dangerous precedent. It seems to me we are enacting an entire revision of these laws.

Mr. FRYE. Oh, no. There are not ten words changed in the entire thirteen sections. It is a compilation. The Senator understands that these laws have been passed in this way: A section in a river and harbor act fifty years ago, another one forty years ago, another one twenty years ago, another one later, and so on down. We put a provision in the last river and harbor act to codify those laws. The Department have codified them, and in their careful examination during the codification they found two or three of them, relating principally to impediments placed in harbors and things of that kind, which required to be changed, as to just a word or two, because the Attorneys-General had rendered different decisions in regard to the effect of the law.

It seems to me there is no necessity of reading them. I will state further, as I said before, that I

examined them myself. I then had them referred to a subcommittee of the Committee on Commerce to go over them carefully, and the subcommittee reported that they were all right.

Mr. NELSON. I wish to say to the Senator from South Dakota that I carefully examined these amendments, and if the Senator will look at the sheets he will see that they are all printed portions of the statutes, nearly every word. There is no material change in the law. It simply puts them all into one body instead of having them scattered. I took special pains especially to see whether they interfered with existing structures and bridges and navigation, and they do not.

Mr. PETTIGREW. Of course, none of those statements satisfies my objection. It appears that we have a codification of these laws, and it is proposed to bring them in here——

Mr. FRYE. If there is any objection, let the amendment be read. I ask those who favor this bill to stay here tonight and pass it. That is all.

Mr. PETTIGREW. I have not said that I would raise an objection, neither have I yielded the floor to the Senator from Maine.

Mr. FRYE. I beg the Senator's pardon. I ought to have addressed the Chair in proper form, but I am getting a bit tired.

Mr. PETTIGREW. The Senator has committed the same offense again. I did not yield the floor, and neither did the Senator from Maine address the Chair.

The PRESIDING OFFICER (Mr. GALLINGER in the chair). The Senator from South Dakota is entitled to the floor.

Mr. PETTIGREW. I do not know how important this legislation is. I have great confidence in the Senator from Maine and the Senator from Minnesota, but it seems to me a bad precedent that we should codify the laws upon this subject, bring it in here at the last minute, at the end of the day, and without reading it, without having it printed and laid upon our desks, without any chance to consider or think about it, practically knowing nothing about it, put it through as an amendment to an appropriation bill. But there are so many awful things in this bill now that I do not think you can possibly make it much worse, and I will not object, for the reason that I believe this will be another reason why the other House will never let the bill see daylight after they get hold of it.

The PRESIDING OFFICER. The question is on agreeing to the amendment proposed by the Senator from Maine [Mr. FRYE].

The amendment was agreed to, as follows: * * *

* * * * *

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1965

No. 291

UNITED STATES OF AMERICA, APPELLANT

v.

STANDARD OIL COMPANY (INCORPORATED IN KENTUCKY), APPELLEE

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF FLORIDA

BRIEF FOR STANDARD OIL COMPANY

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BRIEF FOR STANDARD OIL COMPANY

JURISDICTION

This Court has jurisdiction under 18 U.S.C. 3731. While the filing of notice of appeal by appellant was timely in the District Court, appellant did not serve a notice of appeal upon appellee as required by Rule 10 of the Revised Rules of this Court.

STATUTES INVOLVED

The appellee accepts the appellant's statement of the statutes involved. For convenience, 33 U.S.C. 407 is set forth in the appendix to this brief.

QUESTIONS PRESENTED

1. SHOULD THE APPEAL BE DISMISSED BECAUSE APPELLANT FAILED TO SERVE A NOTICE OF APPEAL UPON APPELLEE, AS REQUIRED BY THE RULES OF THIS COURT?

2. DID APPELLEE'S ACCIDENTAL DISCHARGE OF A SMALL QUANTITY OF VALUABLE GASOLINE INTO NAVIGABLE WATERS CONSTITUTE A CRIMINAL ACT WITHIN THE MEANING OF 33 U.S.C. 407?

STATEMENT

The summary statement, as set forth in appellant's brief, is accurate and acceptable to appellee.

SUMMARY OF ARGUMENT

Appellant admits that it failed to serve upon appellee a notice of appeal as required by Rule 10, nor has appellant filed the required proof of service. Rule 10 makes such failure "sufficient reason for dismissing the appeal." Because criminal statutes are always strictly construed, and because of the non-culpable nature of appellee's unintentional act, the appellee respectfully urges that the Government should be held to the strictest and most exacting compliance with the Rules and that the appeal be dismissed.

The statute which gives rise to the criminal charge against appellee is 33 U.S.C. 407. In summary it prohibits:

1. Discharging "*refuse* matter of any kind," except liquid sewerage, from ship or shore into navigable waters of the United States.

2. Depositing "*material* of any kind" on the bank of any navigable water, where it may be washed into the navigable water and impede or obstruct navigation.

Although "refuse" is a plain and simple word with a commonly accepted meaning, and although it has never been synonymous with "matter of any kind" or "material of any kind," appellant urges upon this Court the proposition that "refuse" is not a limiting, definitive or even a meaningful word and that it should be equated with the broader phrases "material of any kind" or "matter of any kind." Appellant urges the Court, in substance, to delete the word "refuse" from the statute so that the discharge of "any matter of any kind or description" into navigable waters would be prohibited. Appellee will urge, on the other hand, that the word "refuse" should *not* be ignored but should be accorded its normal meaning and definition. Thus, appellee will urge that valuable aviation gasoline, accidentally spilled during a maintenance project, is not refuse matter and that appellee has not violated either the letter or the spirit of the penal statute.

ARGUMENT

1. SHOULD THE APPEAL BE DISMISSED BECAUSE APPELLANT FAILED TO SERVE A NOTICE OF APPEAL UPON APPELLEE, AS REQUIRED BY THE RULES OF THIS COURT?

As pointed out in the summary of appellee's argument, the appellant failed to serve a notice of appeal upon appellee. Appellee brought this to the attention of the Court by filing a motion to dismiss. The Court nevertheless noted probable jurisdiction and placed the case on the summary calendar. Appellee does not intend to abuse the patience of the Court by doing more than calling attention to and reaffirming the arguments in appellee's brief supporting its motion to dismiss.

2. DID APPELLEE'S ACCIDENTAL DISCHARGE OF A SMALL QUANTITY OF VALUABLE GASOLINE INTO NAVIGABLE WATERS CONSTITUTE A CRIMINAL ACT WITHIN THE MEANING OF 33 U. S. C. 407?

The offense prohibited by Section 13 of the Rivers and Harbors Act of 1899, 33 U.S.C 407, is discharging "refuse matter" of any kind into navigable waters. The Government urges that "refuse matter" is synonymous with "matter of any kind," and that the crime prohibited is discharging *any* sort of matter into navigable waters. Clearly, if appellant's construction is adopted, the Government will have succeeded in creating a new crime by administrative interpretation. The Government's construction is not tenable for the following reasons:

A. The word "refuse" is not ambiguous and no construction which destroys its meaning is logically defensible.

B. The Government's construction of the word "refuse" obliterates its normal meaning. This could not be anticipated by any reasonable person. The Government's labored construction must fail because:

(i) If adopted, it would deprive the public of fair notice of the scope and extent of the penal statute involved and would make the statute genuinely misleading.

(ii) The Act imposes absolute criminal liability upon an offender, whether or not the act be willful or negligent, and fair notice is even more essential where a statute imposes absolute liability.

C. Even if the Government's construction did not deprive the public of fair notice, the legislative history does not support the construction sought.

D. There is no need for the broad construction sought by the Government.

THE UNAMBIGUOUS STATUTE DEALS ONLY WITH "REFUSE."

Appellee's most obvious answer to the effort by the United States to broaden the meaning and effect of 33 U.S.C. 407 is that the statute simply does not say what the Government wishes. The pertinent part of the statute simply bans the dumping of "refuse matter." It does nothing more.

In the phrase "refuse matter," refuse is an adjective with a specific meaning. Webster's New International Dictionary, 2nd Edition, Unabridged, defines the adjective "refuse" as: "Refused; rejected; thrown aside or left as worthless or of no value; worthless; useless." No other generally known or accepted definition of the word exists.

As there is no ambiguity, there is no justification for any judicial interpretation of the plain and simple word used—"refuse."

THE GOVERNMENT'S CONSTRUCTION WOULD DEPRIVE THE PUBLIC OF FAIR NOTICE.

The language of 33 U.S.C. 407 in prohibiting the discharge of "refuse matter" is plain and not difficult to understand. It defines a specific act which can be avoided without undue difficulty by the average conscientious law-abiding citizen. Compliance with the law simply requires that the persons affected deal carefully with their refuse or waste matter and avoid, on pain of criminal prosecution, using navigable waters for waste disposal. The key to compliance with the law, however, is knowledge by the citizen of the conduct which is prohibited. If that conduct is not plainly defined, fair notice is not given to the public of the activities which

must be avoided. This Court has many times labeled such lack of fair notice as a violation of "the first essential of due process of law."

Insufficient definition of criminal acts could lead to inadvertent crime, an idea abhorrent in our society. To guard against this, it has become axiomatic that a penal statute must be strictly construed. The instant case is a perfect justification for that ancient axiom. Here the Government has attempted to give to a statute a breadth which is completely inconsistent with its plain words. There is no doubt that the Government's construction of the phrase "refuse matter" as synonymous with "any matter" is not the *obvious* meaning of the phrase, nor is it a construction which even the most agile mind could arrive at merely by reading the statute. It is a construction so forced that even the appellant can justify it only by resorting to ancient and ambiguous legislative history. Therefore, it goes without saying that the average citizen could not reasonably suspect that Congress meant "any matter" when it said "any *refuse* matter" instead.

The conviction of this Court that penal statutes must be fairly construed dates back at least as far as the 1899 Act here in question. At that same time, this Court held in *United States v. Harris,* 177 U.S. 305, that a penal statute affecting any railway "company" did not apply to a *receiver* of such a company.

> Upon the whole, the proposition of the government's counsel is that the words "any company . . ." are intended to cover all those who can possibly violate the preceding two sections . . . But we are not now con-

> cerned with the general intention of Congress, but with its special intention, manifested in the enactments under which this suit was brought. Was it the purpose of Congress . . . to include receivers? Can we fairly bring receivers within the penal clause by reasoning from a supposed or an apparent motive in Congress in passing the act?
>
> * * *
>
> It must be admitted that, in order to hold the receivers, they must be regarded as included in the word "company." Only by a strained and artificial construction, based chiefly upon a consideration of the mischief which the legislature sought to remedy, can receivers be brought within the terms of the law. But can such a kind of construction be resorted to in enforcing a penal statute? Giving all proper force to the contention of the counsel of the government, that there has been some relaxation on the part of the courts in applying the rule of strict construction to such statutes, it still remains that the intention of a penal statute must be found in the language actually used, interpreted according to its fair and obvious meaning. It is not permitted to courts, in this class of cases, to attribute inadvertence or oversight to the legislature when enumerating the classes of persons who are subjected to a penal enactment, nor to depart from the settled meaning of words or phrases in order to bring persons not named or distinctly described within the supposed purpose of the statute.

The Government's construction would render the statute incongruous, if not unconstitutional, for failure to give fair notice, and would bring it within the class of statutes which have often been struck down by this Court. The point was made succinctly in the recent case of *Cramp v. Board of Public Instruction*, 368 U.S. 278.

> We think this case demonstrably falls within the compass of those decisions of the Court which hold that "a statute which either forbids or requires the doing of an act in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application, violates the first essential of due process of law." . . . "No one may be required at peril of life, liberty or property to speculate as to the meaning of penal statutes. All are entitled to be informed as to what the State commands or forbids." . . . "Words which are vague and fluid . . . may be as much of a trap for the innocent as the ancient laws of Caligula."

In *Baggett v. Bullitt,* 377 U.S. 360, the Court recently restated the rule:

> The statute therefore fell within the compass of those decisions of the Court holding that a law forbidding or requiring conduct in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application violates due process of law.

In *Champlin Refining Company v. Corporation Commission of the State of Oklahoma,* 286 U.S. 210, this Court was concerned, oddly enough, with the construction of the word "waste" in a statute regulating the oil industry. That statute prohibited "production of crude oil in such manner . . . as to constitute waste." The Court struck down the statute as too vague and wrote:

> That the terms of a penal statute creating a new offense must be sufficiently explicit to inform those who are subject to it what conduct on their part will render them liable to its penalties, is a well-recognized requirement, consonant alike with ordinary notions of fair play and the settled rules of law. And a statute which either forbids or requires the doing of an act in terms so vague that men of common intelligence must

necessarily guess at its meaning and differ as to its application, violates the first essential of due process of law.

While the word "refuse" is not so vague as to be subject to criticism, the artificial construction sought by the Government would, if permitted, make the statute misleading to the public. Thus, the Government's attempted construction of the word, and not the word itself, would cause the statute to run afoul of the principle of the cases just cited.

IT IS ESPECIALLY IMPORTANT THAT A PENAL STATUTE IMPOSING STRICT LIABILITY NOT BE MISLEADING AND THAT IT GIVE FAIR NOTICE TO THE PUBLIC.

The part of 33 U.S.C. 407 dealing with "refuse matter" is a criminal statute imposing absolute liability upon the offender. The offense is not dependent upon the intent of the offender, nor even on his negligence. The offense is committed simply by depositing refuse into navigable waters, however the deposit may have occurred. Because criminal statutes of this type are stringent, even punitive, greater than ordinary care is demanded that they be plainly worded, to avoid any misunderstanding of their scope. Where neither intention nor negligence is a necessary element of a crime, there is greater danger to the public and greater need for plain statutory language, strictly and fairly construed.

In *American Communications Association v. Charles T. Douds,* 339 U.S. 382, this Court held that a challenged statute punishing false statements made "knowingly and willfully" was not fatally vague, because punishment was restricted to willful violators. The Court pointed out:

> There remain two contentions which merit discussion. One is that §9(h) is unconstitutionally vague . . . The applicable standard, however, is not one of wholly consistent academic definition of abstract terms. It is, rather, the practical criterion of fair notice to those to whom the statute is directed . . . And since the constitutional vice in a vague or indefinite statute is the injustice to the accused in placing him on trial for an offense, the nature of which he is given no fair warning, the fact that punishment is restricted to *acts done with knowledge that they contravene the statute* makes this objection untenable. [Emphasis added.]

Later, in *United States v. National Dairy Products Corporation*, 372 U.S. 29, the Court again sustained a statute as not unduly vague. The Court wrote that the "additional element of predatory intent" provided "further definition of the prohibited conduct." The obvious negative implication is that when intent is not required, and when indeed the crime can be committed without even the negligence of the offender, then it is all the more essential that the statute itself contain the "necessary specificity of warning."

Here the crime can be committed without intent, without malice and even without negligence. All that need occur is that "refuse" be deposited in navigable waters. To give an artificial or unnatural meaning to the key word "refuse" in this statute would completely destroy the requirement of fair notice to the public.

It should be noted that appellant has created the impression throughout its brief that the broad construction of the statute which the Government seeks is necessary to guard against *negligent* dispoiling, and that if its construction is adopted by this Court, the statute would then prohibit will-

ful and *negligent* behavior. For example, at Page 15 of its brief, appellant wrote that "the broad remedial purpose served by the statute is also reflected in Congress' decision to subject to a criminal sanction *negligent* as well as willful acts." Then appellant, by its footnote there, attempted to find evidence of appellee's negligence in the Stipulation of Facts presented to the Court below, whereas the Record plainly shows that no mention of negligence or lack of it was made in the Stipulation or indeed in the Information filed against appellee. Only the word "accidental" was used to describe appellee's behavior.

The Government's persistent effort in this regard is significant for two separate reasons. First, it shows that the Government is unwilling to face up to the full effect of the statutory construction which it seeks. The Government's brief attempts to lessen the obvious consequences of its effort by impiying that the statute would only prohibit willful or negligent acts, rather than impose absolute liability without fault. In fact, neither wrongful intent nor any negligence whatsoever need be alleged or proved by the Government to convict under 33 U.S.C. 407, and, in this very case, neither of those elements was alleged by the Government in its Information against appellee.

Second, the Government's construction of the statute, which would punish willful and negligent acts but not accidents without fault, can be fully appreciated only when it is recalled that the Government attempts to accomplish all this by the interpretation of the single word "refuse." The hopelessness of attempting to create meaningful legislation

by expanding a simple word becomes evident. Thus, the Government's approach would require this Court to hold that "refuse matter" means "any matter of any kind," *except* matter which is neither purposefully nor negligently cast into the water. The Government obviously asks too much.

THE LEGISLATIVE HISTORY DOES NOT SUPPORT THE CONSTRUCTION SOUGHT BY THE GOVERNMENT.

The Government, of course, cannot and does not contend that the statute actually says that spilling "any matter whatsoever" is prohibited, because the words of the statute itself refute any such contention. The prohibited material is "refuse matter of any kind." The Government accurately states that Congress *could* have omitted the word "refuse" and prohibited the dumping of "matter of any kind." But Congress did not do so.

The Government argues that Congress *should* have left out the limiting word "refuse" to help prevent pollution. Here again the answer is that Congress did not do so, and, in any case, the Act specifically exempted sewerage, a much greater source of pollution.

Since "refuse" and "matter of any kind" patently do not mean the same thing, the Government is faced with the burden of producing a satisfactory theory to explain or justify its unusual construction. It bases substantially its entire case on the following historical circumstances: (1) although the major pre-existing Act, the Rivers and Harbors Act of 1890, was almost identical to the 1899 Act here in question (prohibiting the deposit of enumerated kinds of waste and rubbish and concluding with the phrase "ashes,

refuse, or other *waste* of any kind"); (2) a more limited Act also existed, the Rivers and Harbors Act of 1894, which made it unlawful to deposit in certain specified waters only certain enumerated items concluding with the phrase "or any other *matter* of any kind"; and (3) in the very brief Congressional hearings upon the Act of 1899, 33 U.S.C. 407, it was stated that the Act of 1899 was not intended to effect any material change, but was merely to codify the existing laws on the subject, with one or two "slight changes to remove ambiguities" [P. 28 — Appellant's Appendix B]; (4) therefore, Congress must have meant that "waste" or "refuse matter" was to be equated with "any other matter."

But, in truth and in fact, the rationale does not hold true. One of the previous statutes prohibited the dumping of *refuse* and the other, more limited in application, prohibited the dumping of *anything*. It is readily apparent that if a single new act, the Act of 1899, were to replace and supersede both of the previous acts, Congress had to make a choice—either to ban refuse only or to ban everything. If Congress had elected to ban the dumping of "any matter," it could easily have done so. That very possibility was suggested by one of the two prior acts sought to be consolidated. But Congress chose the narrower language and banned the deposit only of "refuse matter."

The Government's logic in now urging that although Congress chose the term "refuse," it meant to use "any matter," completely eludes the appellee. The Government's conclusion would follow from the legislative history if the two terms were synonymous and required no choice. But since one was narrow and restricted and the other was broad

and totally unrestricted, a choice was inevitable, and, having been made, it cannot be disregarded.

The record of the Senate hearings on the 1899 Rivers and Harbors Act throws no light on the previous deliberations of Congress. That record simply reflects that the Senate as a whole gave little attention to the matter and that the subcommittee which codified the pre-existing laws had made only minimal changes "to remove ambiguities." The ambiguity most obvious to appellee is the one just noted involving the choice between prohibiting the deposit of "refuse" or "any matter." There was not a single word in the record about any need or intention to broaden the effect of the general Act of 1890 which prohibited the dumping of waste. Any change intended to ban all matter would have been one of considerable magnitude and it would certainly have invoked some comment.

The Government's brief strives to the limit of credibility for support of its proposition that Congress meant "any matter" when it wrote "any refuse matter." Appellant states that the ban in the New York Harbor Act was broadened in 1888 from "refuse" to "any matter," and indeed it was—but not by implication nor by strained judicial interpretation, but by the simple and obvious method of amending the statute. The 1886 New York Harbor Act prohibited the deposit in that harbor of specified items ending with "other refuse or mill-waste of any kind . . . . " In 1888 the Act was amended and depositing "any other matter of any kind" was prohibited. Instead of supporting the Government's position here that the two terms are synonymous, the history of the New York Harbor Act shows conclusively that Congress was

very much aware of the difference between the two and strongly implies that its choice of the restrictive term "refuse" in the 1899 Act was deliberate.

Finally, an examination of the two sections of the 1899 Act itself should set at rest the charge that Congress did not know the difference between "any refuse matter" and "any material." The first half of Section 13 of that Act bans depositing "refuse" *into* navigable waters. The second half of the same section bans placing "material of any kind" on the bank where it may be washed into the river so as to impede or obstruct navigation. This dichotomy of treatment, by the way, was picked up almost word for word from the original anti-refuse act, the Rivers and Harbors Act of 1890.

The use of a narrow prohibition in one part of a statute and a much broader prohibition in another part of the same act should remove any lingering doubt that there is a difference between the two. The Government admits that the two sections *use* different words, one narrow and the other broad, but it argues that they really mean the same thing because it is not *logical* to give different treatment to those who spill matter into navigable waters and those who pile material along the bank where it may fall into navigable waters. In fact, there are several good and apparent reasons for such different treatment. To successfully prosecute under the latter part of the statute, the Government has the burden of proving that "navigation shall or may be impeded or obstructed." This requirement alone removes from the ambit of this section of the statute a small loss or spill from the bank and permits prosecution only in cases of substantial

magnitude. With this protection, the citizen does not also need the further protection of limiting the *type* of material involved.

There is another reason for treating spillage and stacking differently. While it is unlikely that any significant amount of valuable material which is not refuse will be voluntarily poured *into* a stream, it is likely that valuable, usable goods will be stacked or stored by the river bank. Thus the statute should and does prohibit stacking any matter, refuse or not, by a river in a manner hazardous to navigation. Similar breadth is entirely unnecessary to guard against depositing valuable material *in* the river.

In this area, Congress has evidently concluded that a statute of unlimited breadth is not desirable. Several separate methods of narrowing the scope of the applicable statutes have been used by Congress. Thus in the second part of Section 13 of the 1899 Act (33 U.S.C. 407), the size or volume of the discharge is the critical factor, as Congress has exempted small spills which do not impede navigation. In the Oil Pollution Act of 1924, 33 U.S.C. 431 et seq., Congress has exempted spills which are not willful or negligent, thus avoiding liability without fault. A third course which has been used by Congress is limiting the description of the prohibited material. In the 1890 Act, the 1886 New York Harbor Act and in the first part of Section 13, Congress has limited that description by its use of the phrase "refuse matter." The effect of such choice is to eliminate from the sanctions of the Act the isolated, occasional and accidental spill of valuable, non-refuse matter.

THERE IS NO NEED FOR THE BROAD STATUTORY CONSTRUCTION SOUGHT BY THE GOVERNMENT.

The Government's brief states or implies throughout that unless 33 U.S.C. 407 is held to ban the deposit of *all* matter whatsoever the oil pollution problem will somehow get out of hand. That, of course, is not the case. In the first place, the Oil Pollution Act of 1924 has been passed to deal with oil pollution from ships, far the greatest offenders. In addition, discharging oil which is waste or used oil, sludge and the like, is barred by the present act as effectively as any other "refuse." Refuse is refuse, whether oil or not. There has been absolutely no showing, in the Congressional records or elsewhere, of any need to protect against the occasional spillage and loss of valuable usable oil or gasoline. The Secretary of the Army, in a frank letter to Congress written as recently as 1962, stated that it is "considered desirable specifically to prohibit the dumping of oil *wastes* into all the navigable waters of the United States. . . ." Appellant's brief, P. 14-15 footnote.

The obvious danger at which the statute is aimed is the use of the rivers as depositories of waste and refuse. This problem is brought about almost entirely by willful behavior —by a conscious and repetitious course of conduct rather than by accidental and thus occasional behavior. Such conscious behavior is only likely to occur in the case of refuse matter. Obviously there would be very little purposeful depositing of valuable, non-waste materials into navigable waters. Accidental spills of such valuable material, being occasional, simply are not a source of concern in enforcing the Act.

The Government says the broad construction is necessary to protect navigation. If that were true, Congress could have and doubtless would have prohibited the deposit into navigable water of *any material which impedes navigation*, in which case the definition of the limiting adjective "refuse" would not be before the Court. From appellee's point of view, however, the result would have been the same, because the District Court expressly found that the acts of appellee were "not such as to impede navigation, to damage property or to cause any fire or explosion." Transcript of Record, P. 8-9.

If the need should ever arise, Congress can easily supply the necessary remedial legislation to make unlawful accidental spills of valuable material, but it should have the opportunity to do so purposefully and after due consideration of the specific problem involved, thus affording the public adequate opportunity to be heard.

The Government admits that if its broad interpretation of the statute were adopted it would create a situation where one would be subject to criminal prosecution for the most trivial spillage. But the Government urges that this is not a matter for concern because "the good sense of prosecutors" and the "conscience and circumspection in prosecuting officers" will protect the citizenry. Appellee respectfully disagrees with this theory and as respectfully suggests that its own case is evidence that the "conscience and circumspection" are often absent. The offices of the prosecuting officers and the Corps of Engineers and the Coast Guard are all full of appellee's detailed explanations, apologies and outlines of specific steps already taken to avoid any reoccurrence of its

small, accidental spill, all to no avail. Furthermore, if the Government prosecutors were given the untrammeled power sought here, the average citizen, fearing criminal prosecution, would be very reluctant to report a small accidental spill to the Coast Guard and other appropriate authorities, as the appellee did in the instant case.

Any legislative body debating this issue would doubtlessly deliberate at length as to the necessity of imposing criminal sanctions against every accidental spill of any valuable material. The legislative body would likely insist upon the most persuasive testimony that accidental spills (1) constitute a substantial menace to navigable waters (2) which would be effectively diminished by the imposition of criminal penalties. We submit that neither of these facts has been evidenced and neither of them is true. There is no evidence before the Court that Congress has ever been given the chance even to consider the necessity of making unlawful the accidental spillage of valuable material. Therefore, Congress should not be gratuitously credited with an unsuspecting solution to an unknown problem.

APPELLANT'S CASES

Of the cases cited by appellant, *The Colombo*, 42 F.2d 211 (C.A. 2), dealt with a violation of the New York Harbor Act of 1888, 33 U.S.C 441, which bans the discharge into the harbor of "any other matter of any kind." The Court simply held that oil, even unused oil, was included within the descriptive phrase "matter of any kind" and its discharge was a violation of that broad act.

La Merced, 84 F.2d 444 (C.A. 9), did discuss the applicable act, 33 U.S.C. 407. The Court made certain observations which are in accord with appellee's arguments herein:

> Section 407 as quoted, if read literally, prohibits two acts. The first is the discharge of "any refuse matter of any kind or description whatever * * * into any navigable water of the United States." The other act prohibited is the discharge of "material of any kind in any place on the bank of any navigable water * * * whereby navigation shall or may be impeded or obstructed." The first prohibited act is a discharge of refuse into navigable water. The second is the discharge of "material of any kind" on the bank of navigable water, and the clause makes no distinction concerning the "kind" of material, that is, whether it is refuse matter or not, so long as the material, whatever its character, impedes or obstructs navigation. The first prohibited act is not made dependent on the fact that the refuse matter must impede or obstruct navigation.
>
> The sole issue is whether the phrase "any refuse matter of any kind or description whatever" includes "oil" within its meaning.
>
> * * *
>
> We see no ambiguity in the statute which prohibits the deposit of "any refuse matter of any kind or description whatever * * * into any navigable water of the United States." It is difficult to see how the statute could be plainer, for the meaning is clear under a literal reading of the statute.
>
> * * *
>
> Under such literal construction we see no reason for limiting "refuse matter of any kind or description whatever" to such refuse matter only as would impede or obstruct navigation. The plain intention of Congress was to prohibit the discharge into navigable water of any material, *so long as such material was "refuse matter of any kind or description whatever."* If a material

> falls within these words of the statute, the discharge of the same into navigable water is prohibited. *Under particular circumstances,* we see no reason why oil could not be "refuse matter" the same as any other material. [Emphasis added.]

The Court makes it plain that oil *could be* refuse "under certain circumstances," but makes it equally plain that the test is whether or not the oil was in fact *refuse* or *waste* oil.

The final effort of the Government to avoid the limitations of the statute has been to adopt the interpretation of the Second Circuit in *United States v. Ballard Oil Co.*, 195 F.2d 369 (C.A. 2), in which the Court first established that the word "refuse" could not be equated with "matter," but then destroyed the meaning and effect of the word by holding that valuable oil became "refuse" *after* it was spilled. As virtually all matter becomes economically useless after being spilled into a navigable river of the United States, the Second Circuit neatly emasculated the limitations imposed by the statutory word "refuse." If the character of matter after it is deposited into the water is controlling, it was useless of Congress to limit the prohibited material to "refuse." The statutory language plainly describes and defines that which *is deposited* in the river, not what the deposit becomes *after* it is deposited. The Second Circuit simply attempted to reword the statute to prohibit the deposit into navigable waters of "any matter which becomes refuse" when so deposited.

The Government carries this unusual rationale to its extreme by urging that the salvage value of material, after its deposit into the river, is the factor which determines

whether or not the statute was violated when the material was deposited into the river. Having freed itself from the restraint of the ordinary meaning of the word "refuse," the Government cites at page 19 of its brief the case of *United States v. 2,200,000 pounds of Chlorine Cargo*, as a "dramatic demonstration" of a case where low salvage value would establish the matter in question as "refuse." But the Government has left itself on the horns of a dilemma for the unsalvageable item in the *Chlorine* case was a large and useful barge, accidentally sunk in the Mississippi River. Surely no serious contention can be made that a barge, accidentally sunk, can fall within the ban of 33 U.S.C. 407 against "refuse matter . . . thrown, discharged or deposited . . . into any navigable water of the United States." The Government need not distort §407 so, because it can proceed against sunken hulls under other sections of Chapter 33 U.S.C., which is the course actually followed by the Government in the *Chlorine* case, in which no effort was made to prosecute under the refuse section of the statute, §407.

A plain unambiguous statute must be given its plain, unambiguous meaning. To attempt to do otherwise with a criminal statute is overreaching on the part of the enforcement authority. The situation cries out for a strict construction of the applicable criminal statute. Affected citizens should not have their fates and reputations left to the uncontrolled "good conscience" of federal prosecutors. We urge that the Court below was eminently correct in quoting Judge Borah in *United States v. The Delvalle*, 45 F.Supp. 746 (D.C., La., 1942):

The statute in suit is a penal statute and must be strictly construed.

The word "refuse" is used in the statute in its adjective sense. Webster's New International Dictionary . . . defines the adjective, "refuse," as follows: "Refused; rejected; thrown aside or left as worthless or of no value; worthless; useless."

The oil involved in this proceeding was not refused, rejected, or thrown aside or left as worthless or of no value. It was not worthless nor useless. The accidental discharge of valuable, usable oil, under the circumstances set forth, does not constitute a throwing, discharging, or depositing of refuse matter, and is not a violation of the statute. 33 U.S.C.A. §§407, 411 and 412.

CONCLUSION

For the reasons stated, appellee respectfully submits that this appeal should be dismissed or, in the alternative, that the judgment below be affirmed.

Respectfully submitted,

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January, 1966.

APPENDIX

33 U.S.C. 407 (Section 13 of the Rivers and Harbors Act of 1899), in pertinent part:

§407.

It shall not be lawful to throw, discharge, or deposit, or cause, suffer, or procure to be thrown, discharged, or deposited either from or out of any ship, barge, or other floating craft of any kind, or from the shore, wharf, manufacturing establishment, or mill of any kind, any refuse matter of any kind or description whatever other than that flowing from streets and sewers and passing therefrom in a liquid state, into any navigable water of the United States, or into any tributary of any navigable water from which the same shall float or be washed into such navigable water; and it shall not be lawful to deposit, or cause, suffer, or procure to be deposited material of any kind in any place on the bank of any navigable water, or on the bank of any tributary of any navigable water, where the same shall be liable to be washed into such navigable water, either by ordinary or high tides, or by storms or floods, or otherwise, whereby navigation shall or may be impeded or obstructed: * * *

SUPREME COURT OF THE UNITED STATES

No. 291.—October Term, 1965.

United States, Appellant, v. Standard Oil Company.	On Appeal From the United States District Court for the Middle District of Florida.

[May 23, 1966.]

Mr. Justice Douglas delivered the opinion of the Court.

The question presented for decision is whether the statutory ban on depositing "any refuse matter of any kind or description" [1] in a navigable water covers the discharge of commercially valuable aviation gasoline.

Section 13 of the Rivers and Harbors Act provides:

> "It shall not be lawful to throw, discharge, or deposit . . . any refuse matter of any kind or description whatever other than that flowing from streets and sewers and passing therefrom in a liquid state, into any navigable water of the United States . . . ."

The indictment charged respondent, Standard Oil (Kentucky), with violating § 13 by allowing to be discharged into the St. Johns River "refuse matter" consisting of 100-octane aviation gasoline. Respondent moved to dismiss the indictment, and, for the purposes of the motion, the parties entered into a stipulation of fact. It states that the gasoline was commercially valuable and that it was discharged into the St. Johns only because a shut-off valve at dockside had been "accidentally" left open.

The District Court dismissed the indictment because it was of the view that the statutory phrase "refuse matter" does not include commercially valuable oil. The United States appealed directly to this Court under the

[1] 30 Stat. 1152, 33 U. S. C. § 407 (1964 ed.).

Criminal Appeals Act (18 U. S. C. § 3731, 1964 ed.). We noted probable jurisdiction. 382 U. S. 807.

This case comes to us at a time in the Nation's history when there is greater concern than ever over pollution—one of the main threats to our free-flowing rivers and to our lakes as well. The crisis that we face in this respect would not of course warrant us in manufacturing offenses where Congress has not acted nor in stretching statutory language in a criminal field to meet strange conditions. But whatever may be said of the rule of strict construction, it cannot provide a substitute for common sense, precedent, and legislative history. We cannot construe § 13 of the Rivers and Harbors Act in a vacuum. Nor can we read it as Baron Parke [2] would read a pleading.

The statutory words are "any refuse matter of any kind or description." We said in *United States* v. *Republic Steel Corp.*, 362 U. S. 482, 491, that the history of this provision and of related legislation dealing with our free-flowing rivers "forbids a narrow, cramped reading" of § 13. The District Court recognized that if this were waste oil it would be "refuse matter" within the meaning of § 13 but concluded that it was not within the statute because it was "valuable" oil.[3] That is "a narrow, cramped reading" of § 13 in partial defeat of its purpose.

Oil is oil and whether useable or not by industrial standards it has the same deleterious effect on waterways.

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[2] A man whose "fault was an almost superstitious reverence for the dark technicalities of special pleading." XV Dictionary of National Biography, p. 226 (Stephen and Lee ed. 1937–1938).

[3] The District Court followed the decision of the United States District Court in *United States* v. *The Delvalle*, 45 F. Supp. 746, 748, where it was said: "The accidental discharge of *valuable, usable oil* . . . does not constitute . . . a violation of the statute." (Emphasis added.)

In either case, its presence in our rivers and harbors is both a menace to navigation and a pollutant. This seems to be the administrative construction of § 13, the Solicitor General advising us that it is the basis of prosecution in approximately one-third of the oil pollution cases reported to the Department of Justice by the Office of the Chief of Engineers.

Section 13 codified pre-existing statutes:

An 1886 Act (24 Stat. 329) made it unlawful to empty "any ballast, stone, slate, gravel, earth, slack, rubbish, wreck, filth, slabs, edgings, sawdust, slag, or cinders, or other refuse or mill-waste of any kind into New York Harbor"—which plainly includes valuable pre-discharge material.

An 1888 Act (25 Stat. 209) "to prevent obstructive and injurious deposits" within the Harbor of New York and adjacent waters banned the discharge of "refuse, dirt, ashes, cinders, mud, sand, dredgings, sludge, acid, *or any other matter of any kind,* other than that flowing from streets, sewers, and passing therefrom in a liquid state"—which also plainly include valuable pre-discharge material. (Emphasis added.)

The 1890 Act (26 Stat. 453) made unlawful emptying into navigable waters "any ballast, stone, slate, gravel, earth, rubbish, wreck, filth, slabs, edgings, sawdust, slag, cinders, ashes, refuse or other waste of any kind . . . which shall tend to impede or obstruct navigation." Here also valuable pre-discharge materials were included.

The 1894 Act (28 Stat. 363) prohibited deposits in harbors and rivers for which Congress had appropriated money for improvements of "ballast, refuse, dirt, ashes, cinders, mud, sand, dredgings, sludge, acid, *or any other matter of any kind* other than that flowing from streets, sewers, and passing therefrom in a liquid state." (Emphasis added.) This Act also included valuable pre-discharge material.

The Acts of 1886 and 1888, then, dealt specifically with the New York Harbor; the scope of the latter was considerably broader, covering as it did the deposit of "any other matter of any kind." The Acts of 1890 and 1894 paralleled the earlier enactments pertaining to New York, applying their terms to waterways throughout the Nation.

The 1899 Act now before us was no more than an attempt to consolidate these prior Acts into one. It was indeed stated by the sponsor in the Senate to be "in accord with the statutes now in existence, only scattered . . . from the beginning of the statutes down through the end" (32 Cong. Rec. 2296), and reflecting merely "very slight changes to remove ambiguities." *Id.*, p. 2297.

From an examination of these statutes, several points are clear. *First*, the 1894 Act and its antecedent, the 1888 Act applicable to the New York Harbor,[4] drew on their face no distinction between valuable and valueless substances. *Second*, of the enumerated substances, some may well have had commercial or industrial value prior to discharge into the covered waterways. To be more specific, ashes and acids were banned whether or not they had any remaining commercial or industrial value. *Third*, these Acts applied not only to the enumerated substances but also to the discharge of "any other matter of any kind." Since the enumerated substances included those with a pre-discharge value, the rule of *ejusdem generis* does not require limiting this latter category to substances lacking a pre-discharge value. *Fourth*, the

[4] The codification did not include the Acts of 1886 and 1888 which pertained only to New York. These remain in effect and are found at 33 U. S. C. §§ 441–451 (1964 ed.). The New York statute has been held to apply not only to waste oil which was unintentionally discharged (*The Albania*, 30 F. 2d 727) but also to valuable oil negligently discharged. *The Colombo*, 42 F. 2d 211.

coverage of these Acts was not diminished by the codification of 1899. The use of the term "refuse" in the codification serves in the place of the lengthy list of enumerated substances found in the earlier Acts and the catch-all provision found in the Act of 1890. The legislative history demonstrates without contradiction that Congress intended to codify without substantive change the earlier Acts.

The philosophy of those antecedent laws seems to us to be clearly embodied in the present law. It is plain from its legislative history that the "serious injury" to our water courses (S. Rep. No. 224, 50th Cong., 1st Sess., p. 2) sought to be remedied was caused in part by obstacles that impeded navigation and in part by pollution—"the discharge of sawmill waste into streams" (*id.*, p. 2) and the injury of channels by "deposits of ballast, steamboats ashes, oysters, and rubbish from passing vessels." *Ibid.* The list is obviously not an exhaustive list of pollutants. The words of the Act are broad and inclusive: "any refuse matter of any kind or description whatever." Only one exception is stated: "other than that flowing from streets and sewers and passing therefrom in a liquid state, into any navigable water of the United States." More comprehensive language would be difficult to select. The word "refuse" does not stand alone; the "refuse" banned is "of any kind or description whatever," apart from the one exception noted. And, for the reasons already stated, the meaning we must give the term "refuse" must reflect the present codification's statutory antecedents.

The Court of Appeals for the Second Circuit in *United States* v. *Ballard Oil Co.*, 195 F. 2d 369 (L. Hand, Augustus Hand, and Harrie Chase) held that causing good oil to spill into a watercourse violated § 13. The word "refuse" in that setting, said the court, "is satisfied by anything which has become waste, however useful it

may earlier have been." [5] *Id.*, p. 371. There is nothing more deserving of the label "refuse" than oil spilled into a river.

That seems to us to be the common sense of the matter. The word "refuse" includes all foreign substances and pollutants apart from those "flowing from streets and sewers and passing therefrom in a liquid state" into the watercourse.

That reading of § 13 is in keeping with the teaching of Mr. Justice Holmes that a "river is more than an amenity, it is a treasure." *New Jersey* v. *New York*, 283 U. S. 336, 342. It reads § 13 charitably as *United States* v. *Republic Steel Corp.*, *supra*, admonished.

We pass only on the quality of the pollutant, not on the quantity of proof necessary to support a conviction nor on the question as to what *scienter* requirement the Act imposes, as those questions are not before us in this restricted appeal.[6]

Reversed.

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[5] The decisions in the instant case and in *United States* v. *The Delvalle*, *supra*, n. 3, are against the stream of authority. An unreported decision of a United States District Court in 1922 (*United States* v. *Crouch*), holding § 13 inapplicable to polluting but non-obstructing deposits, causing the Oil Pollution Act of 1924, 43 Stat. 604, 33 U. S. C. § 431 *et seq.* (1964 ed.), to be passed. See S. Rep. No. 66, 68th Cong., 1st Sess.; H. R. Rep. No. 794, 68th Cong., 1st Sess. It is applicable to the discharge of oil by vessels into coastal waters but not to deposits into inland navigable waters; and it explicitly provides that it does not repeal or modify or in any manner affect other existing laws. 33 U. S. C. § 437 (1964 ed.).

[6] "Having dealt with the construction placed by the court below upon the Sherman Act, our jurisdiction on this appeal is exhausted. We are not at liberty to consider other objections to the indictment or questions which may arise upon the trial with respect to the merits of the charge. For it is well settled that where the District Court has based its decision on a particular construction of the underlying statute, the review here under the Criminal Appeals Act is confined to the question of the propriety of that construction." *United States* v. *Borden Co.*, 308 U. S. 188, 206–207.

SUPREME COURT OF THE UNITED STATES

No. 291.—October Term, 1965.

United States, Appellant, v. Standard Oil Company.	On Appeal From the United States District Court for the Middle District of Florida.

[May 23, 1966.]

Mr. Justice Harlan, whom Mr. Justice Black and Mr. Justice Stewart join, dissenting.

Had the majority in judging this case been content to confine itself to applying relevant rules of law and to leave policies affecting the proper conservation of the Nation's rivers to be dealt with by the Congress, I think that today's decision in this criminal case would have eventuated differently. The best that can be said for the Government's case is that the reach of the provision of § 13 of the Rivers and Harbors Act of 1899, 30 Stat. 1152, 33 U. S. C. § 407 (1964 ed.), under which this indictment is laid, is uncertain. This calls into play the traditional rule that penal statutes are to be strictly construed. In my opinion application of that rule requires a dismissal of the indictment.

I.

Section 13 forbids the deposit of all kinds of "refuse matter" into navigable rivers "other than that flowing from streets and sewers and passing therefrom in a liquid state." As the Court notes, this 1899 Act was part of a codification of prior statutes. This revamping was not discussed at any length on the floor of either House of Congress; the Senate was informed only that the provisions were merely a codification of existing law, without changes in substance. 32 Cong. Rec. 2296–2297 (1899). Section 13 was in fact based on two very similar prior

statutes. The Rivers and Harbors Appropriation Act of 1890 provided the first national anti-obstruction provision, 26 Stat. 453:

> "Sec. 6. That it shall not be lawful to cast, throw, empty, or unlade, or cause, suffer, or procure to be cast, thrown, emptied, or unladen, either from or out of any ship, vessel, lighter, barge, boat, or other craft, or from the shore, pier, wharf, furnace, manufacturing establishments, or mills of any kind whatever, any ballast, stone, slate, gravel, earth, rubbish, wreck, filth, slabs, edgings, sawdust, slag, cinders, ashes, refuse, or other waste of any kind, into any port, road, roadstead, harbor, haven, navigable river, or navigable waters of the United States which shall tend to impede or obstruct navigation . . . ."

A later statute, § 6 of the Rivers and Harbors Act of 1894, 28 Stat. 363, provided somewhat similarly:

> "That it shall not be lawful to place, discharge, or deposit, by any process or in any manner, ballast, refuse, dirt, ashes, cinders, mud, sand, dredgings, sludge, acid, or any other matter of any kind other than that flowing from streets, sewers, and passing therefrom in a liquid state, in the waters of any harbor or pier of the United States, for the improvement of which money has been appropriated by Congress . . . ."

The Court relies primarily on the latter Act, contending that its applicability to "any other matter of any kind" would surely encompass oil, even though commercially valuable. Further, the Court notes (*ante*, p. 4) that the 1894 statute was modeled after a federal statute of 1888 dealing with New York Harbor, 25 Stat. 209. Under this New York Harbor Act, which still remains on the books, 33 U. S. C. § 441 (1964 ed.), prosecutions for accidental deposits of commercially useful oil have

been sustained. *The Colombo*, 42 F. 2d 211. This background is thought to reinforce the view that oil of any type would fall within the 1894 statute's purview. Since the present enactment was intended to be merely a codification, the majority concludes that the construction of the broader 1894 predecessor should govern.

Whatever might be said about how properly to interpret the 1890 and, more especially, the 1894 statutes, it is the 1899 Act that has been on the books for the last 66 years, and its purposes and language must guide the determination of this case. To the extent that there was some difference in scope between the 1890 and 1894 Acts, these were necessarily resolved in the 1899 codification, which, while embodying the essential thrust of both prior statutes, appears from its plain language to have favored the more restrictive coverage of the 1890 Act. Moreover, it is questionable to what extent the Court's speculation as to the meaning of a phrase in one of the prior statutes is relevant at all when the language of the present statute, which is penal in nature, is in itself explicit and unambiguous.

The purpose of § 13 was essentially to eliminate obstructions to navigation and interference with public works projects. This 1899 enactment, like the two preexisting statutes which it was intended to codify, was a minor section attached to a major appropriation act together with other measures dealing with sunken wrecks,[1] trespassing at public works sites,[2] and obstructions caused by improperly constructed bridges, piers, and other structures.[3] These statutes were rendered necessary primarily

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[1] Rivers and Harbors Act of 1899, § 15, 30 Stat. 1152, 33 U. S. C. § 409 (1964 ed.).

[2] Rivers and Harbors Act of 1899, § 14, 30 Stat. 1152, 33 U. S. C. § 408 (1964 ed.).

[3] Rivers and Harbors Act of 1899, § 12, 30 Stat. 1151, 33 U. S. C. § 406 (1964 ed.).

because navigable rivers, which the Congress was appropriating funds to improve, were being obstructed by depositing of waste materials by factories and ships.[4] It is of course true, as the Court observes, that "oil is oil," *ante*, p. 2, and that the accidental spillage of valuable oil may have substantially the same "deleterious effect on waterways" as the wholesale depositing of waste oil. But the relevant inquiry is not the admittedly important concerns of pollution control, but Congress' purpose in enacting this anti-obstruction Act, and that appears quite plainly to be a desire to halt through the imposition of criminal penalties the depositing of obstructing refuse matter in rivers and harbors.

The Court's construction eschews the everyday meaning of "refuse matter"—waste, rubbish, trash, debris, garbage, see Webster's New International Dictionary, 3d ed.—and adopts instead an approach that either reads "refuse" out of the Act altogether, or gives to it a tortured meaning. The Court declares, at one point, that "The word 'refuse' includes all foreign substances and pollutants apart from those 'flowing from streets and sewers and passing therefrom in a liquid state' into the watercourse." *Ante*, p. 6. Thus, dropping anything but pure water into a river would appear to be a federal misdemeanor. At the same time, the Court also appears to endorse the Second Circuit's somewhat narrower view that "refuse matter" refers to any material, however valu-

[4] Congress was presented, when considering one of the predecessors of the 1899 Act, with the representations of the Office of the Chief of Army Engineers that there had been "serious injury to navigable waters by the discharge of saw-mill waste into streams . . . . In fair-ways of harbors, channels are injured from deposits of ballast, steam-boat ashes, oysters, and rubbish from passing vessels." S. Rep. No. 224, 50th Cong., 1st Sess., 2 (1888). See also H. R. Rep. No. 1826, 55th Cong., 3d Sess., 3–4 (1899). There is no support for the proposition that these statutes were directed at "pollution" independently of "obstruction."

able, which becomes unsalvageable when introduced into the water. *Ante*, pp. 5–6. On this latter approach, the imposition of criminal penalties would in effect depend in each instance on a prospective estimate of salvage costs. Such strained definitions of a phrase that is clear as a matter of ordinary English hardly commend themselves, and at the very least raise serious doubts as to the intended reach of § 13.

II.

Given these doubts as to the proper construction of "refuse matter" in § 13, we must reckon with a traditional canon that a penal statute will be narrowly construed. See II Hale, Historia Placitorum Coronae 335 (1736); *United States* v. *Wiltberger*, 5 Wheat. 76, 95. The reasons underlying this maxim are various. It appears likely that the rule was originally adopted in order to spare people from the effects of exceedingly harsh penalties. See Hall, Strict or Liberal Construction of Penal Statutes, 48 Harv. L. Rev. 748, 750 (1935). Even though this rationale might be thought to have force were the defendant a natural person,[5] I cannot say that it is particularly compelling in this instance where the maximum penalty to which Standard Oil might be subject is a fine of $2,500. 33 U. S. C. § 411 (1964 ed.).

A more important contemporary purpose of the notion of strict construction is to give notice of what the law is, in order to guide people in their everyday activities. Again, however, it is difficult to justify a narrow reading of § 13 on this basis. The spilling of oil of any type into rivers is not something one would be likely to do whether or not it is legally proscribed by a federal statute.

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[5] The *minimum* sentence for an individual convicted of violating § 13 is a $500 fine or 30 days' imprisonment, not an insignificant penalty for accidentally dropping foreign matter into a river. 33 U. S. C. § 411 (1964 ed.).

A broad construction would hardly raise dangers of penalizing people who have been innocently pouring valuable oil into navigable waters, for such conduct in Florida is unlawful whatever the effect of § 13. A Florida statute penalizing as a misdemeanor the depositing into waters within the State of "any rubbish, filth, or poisonous or deleterious substance or substances, liable to affect the health of persons, fish, or live stock . . . ," Fla. Stat. Ann., Tit. 27, § 387.08 (1960 ed.), quite evidently reaches the dumping of commercial oil. And Florida's nuisance law would likewise seem to make this conduct actionable in equity. See, *e. g.*, *The Ferry Pass Inspectors' & Shippers' Assn.* v. *The White Rivers Inspectors' & Shippers' Assn.*, 57 Fla. 399, 48 So. 643. Finally, as noted earlier, *ante*, pp. 5–6, n. 5, prior decisions by some lower courts have held § 13 applicable to spillage of oil. For these reasons this justification for the canon of strict construction is not persuasive in this instance.

There is, however, a further reason for applying a seemingly straightforward statute in a straightforward way. In *McBoyle* v. *United States*, 283 U. S. 25, this Court held that a statute making it a federal crime to move a stolen "motor vehicle" in interstate commerce did not apply to a stolen airplane. That too was a case in which precise clarity was not required in order to give due warning of the line between permissible and wrongful conduct, for there could not have been any question but that stealing aircraft was unlawful. Nevertheless, Mr. Justice Holmes declared that "Although it is not likely that a criminal will carefully consider the text of the law before he murders or steals, it is reasonable that a fair warning should be given to the world in language that the common world will understand, of what the law intends to do if a certain line is passed." 283 U. S., at 27. The policy thus expressed is based primarily on

a notion of fair play: in a civilized state the least that can be expected of government is that it express its rules in language all can reasonably be expected to understand. Moreover, this requirement of clear expression is essential in a practical sense to confine the discretion of prosecuting authorities, particularly important under a statute such as § 13 which imposes criminal penalties with a minimal, if any, *scienter* requirement.[6]

In an area in which state or local law has traditionally regulated primary activity,[7] there is good reason to restrict federal penal legislation within the confines of its language. If the Federal Government finds that there is sufficient obstruction to, or pollution of, navigable waters caused by the introduction of commercial oil or other nonrefuse material, it is an easy matter to enact appropriate regulatory or penal legislation.[8] Such legislation can be directed at specific types of pollution, and the remedies devised carefully to ensure compliance. Indeed, such a statute was enacted in 1924 to deal with oil pollution in coastal waters caused by vessels, 43 Stat. 605, 33 U. S. C. §§ 433, 434 (1964 ed.).

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[6] The parties were not in agreement as to what *scienter* requirement the statute imposes. This question is not before us under the restricted jurisdiction granted to this Court under 18 U. S. C. § 3731 (1964 ed.), see *United States* v. *Petrillo*, 332 U. S. 1; *United States* v. *Borden Co.*, 308 U. S. 188, and the Court today intimates no views on the question.

[7] Besides the Florida pollution statute adverted to earlier, Fla. Stat. Ann., Tit. 27, § 387.08 (1960 ed.), the city of Jacksonville has enacted ordinances dealing generally with fire prevention, §§ 19–4.1 to 19–4.24 (1958 Supp.), disposal of waste material, § 21–12 (1958 Supp.), and pollution of the city water supply, § 27–52 (1953 Code).

[8] See, *e. g.*, special message of the President dealing with new anti-pollution legislation, Preservation of Our Natural Heritage—Message from the President of the United States, H. Doc. No. 387, 112 Cong. Rec. 3519–3522 (Feb. 23, 1966).

To conclude that this attempted prosecution cannot stand is not to be oblivious to the importance of preserving the beauties and utility of the country's rivers. It is simply to take the statute as we find it. I would affirm the judgment of the District Court.